Calendar No. 116

84TH CONGRESS, 1st Session } SENATE { REPORT No. 116

DISPOSAL OF BAYTOWN, TEX., COPOLYMER PLANT

MARCH 22 (legislative day, MARCH 10), 1955.—Ordered to be printed

Mr. FREAR, from the Committee on Banking and Currency, submitted the following

REPORT

[To accompany S. 691]

The Committee on Banking and Currency, to whom was referred the bill (S. 691) to amend the Rubber Producing Facilities Disposal Act of 1953, so as to permit the disposal thereunder of Plancor No. 877 at Baytown, Tex., having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

GENERAL STATEMENT

The purpose of this bill is to allow the Rubber Producing Facilities Disposal Commission to negotiate with prospective purchasers for the sale of the copolymer plant located at Baytown, Tex. (Plancor No. 877) presently owned by the Federal Government. Negotiations and sale are to be carried out subject to the same general provisions of the Rubber Producing Facilities Disposal Act of 1953 (hereinafter referred to as the Disposal Act) that apply to the negotiations and sale of other Government-owned synthetic-rubber facilities covered by that act.

This plant is located on about 48 acres near Baytown, Tex., approximately 28 miles east of Houston. Construction was started in 1942 under the supervision of the Goodyear Tire & Rubber Co. It was originally designed and built with a capacity to produce 30,000 long tons (2,240 pounds per ton) per year of general purpose synthetic rubber (GR-S). Subsequent additions and improvements have increased the annual capacity of the plant to about 44,000 long tons. Equipment has been added to prepare carbon-black slurries (watery mixtures) and the plant has been converted to the "cold" rubber process, which copolymerizes the feedstocks at a lower temperature than the so-called hot rubber process. Exact production capacity of the plant depends upon the types of products made and the frequency of changes of products. The plant presently produces two general types

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of synthetic rubber, namely, cold black masterbatches and cold oil-black masterbatches. It is also equipped to produce these products according to the "hot" process, as well as the cold or hot general purpose synthetic rubber and cold or hot oil masterbatch.

According to the Reconstruction Finance Corporation, the approximate original construction cost of this plant was $7,786,000. Also according to the Disposal Commission, the gross book value of the plant on August 31, 1954, was $9,884,433 and the net book value amounted on that date to $4,427,224. As in the case of the other Government-owned synthetic-rubber facilities, these figures are given merely for informational purposes. They are not to be deemed indicative of the full, fair value which should be received by the Government upon sale of the plant. The Disposal Commission noted in its report to the Congress that it used potential earning power as a prime factor in determining an appropriate price for sale of the plants recommended for sale by the Disposal Commission. In the case of this plant, a going business is being offered for sale.

Pursuant to an agreement with the Federal Government, this plant is now operated for Government account by the General Tire & Rubber Co.

This plant is 1 of 13 copolymer plants included among the 27 rubber-producing facilities offered for sale under the Disposal Act of 1953.

In its report to the Congress filed on January 24, the Disposal Commission noted that it received only a single proposal to buy this plant. That was from General Tire & Rubber Co., which offered initially to pay $2,486,448 for the plant. The Commission negotiated with the General Tire & Rubber Co. for the sale of the Baytown copolymer plant. After holding numerous conferences in which the Disposal Commission noted that the General Tire & Rubber Co. bargained in good faith, the negotiating parties were unable to agree on a sales price deemed acceptable by the Disposal Commission. The highest offer made by General Tire & Rubber Co. was $2,802,448. This was arrived at by adding to its initial offering price an additional $316,000 for net additions to the plant to April 30, 1955.

When it became apparent to the Commission that it could not expect to receive an acceptable price from the General Tire & Rubber Co., it attempted on December 27, 1954, to interest Midland Rubber Co. in the purchase of the plant. This company operates for the Government the copolymer plant (Plancor No. 611) located at Los Angeles, Calif. Midland stated it was not interested in buying the Baytown copolymer plant. The Disposal Commission advised your committee's Subcommittee on Production and Stabilization that it made no other formal attempt to interest other eligible organizations in purchasing this plant, because of the paucity of eligible bidders on copolymer plants compared with the number of such plants available for sale. The Disposal Commission noted that during negotiations it had at times mentioned to other bidders on copolymer plants that they might be interested in looking into the purchase of the Baytown copolymer plant. Under the provisions of section 16 of the Disposal Act, the Commission was authorized to negotiate for sale of a copolymer plant only with those who submitted a proposal to purchase that plant or another copolymer plant.

In view of its inability to obtain an acceptable offer, the Disposal Commission did not include the Baytown copolymer plant among those it recommended for sale.

Assuming other rubber-producing facilities are sold under the provisions of the Disposal Act, this plant at Baytown must be placed in standby condition pursuant to section 8 (a) of that act, unless further appropriate legislation is enacted by the Congress. Section 8 (a) of that act provides that once placed in standby, the plant cannot be sold for 3 years, and cannot be operated as a rubber-producing facility except pursuant to further act of Congress.

Your committee's subcommittee took cognizance of certain legal problems raised by the fact that enactment of this bill will upset that provision of section 8 (a) as it relates to the Baytown copolymer plant. The subcommittee through its chairman, the junior Senator from Delaware (Mr. Frear), gave notice through his statement on the floor of the Senate on February 28, 1955, of public hearings to begin on March 8, 1955, before the subcommittee and stated:

> This is to give public notice that anyone objecting to S. 691 for any reason is expected to bring his objection to the attention of the subcommittee in writing prior to the date of the hearing.

Similar notice was given in a press release issued the same day by the chairman of the subcommittee. No direct objections were received in response to this invitation by the date specified. Hearings on this bill and disposal of other Government-owned rubber-producing facilities were held by the subcommittee from March 8 to March 11, 1955, inclusive. Further discussion on the problem arose during the course of the hearings before the subcommittee. Consequently, on March 9, 1955, the chairman of the subcommittee in open hearings and by press release noted that on February 28, he had asked all persons objecting to S. 691 to make their views known. He then gave notice that any such objections, in order to be considered by the Committee on Banking and Currency must be received by the committee on or before midnight March 15, 1955. No objections to the bill have been received by the subcommittee or the committee in response to these invitations.

Your committee therefore feels justified in assuming that the prospective purchasers of the remaining rubber-producing facilities recommended for sale by the Disposal Commission have no objection to the enactment of this bill as amended by your committee. Speaking on their own behalf, several of these purchasers so indicated in the course of their testimony before the subcommittee.

The subcommittee received testimony that the Baytown plant is not a high-cost producer and is therefore fully capable of competing vigorously in the synthetic-rubber business. It was also testified that the product of this plant—black and oil-black masterbatches—is a specialty in good demand. This particular plant has supplied 40 percent of the demand for this specialty product and presently provides nearly 60 percent of that demand. Users include consumers of all size—including many small users having a special dependence on this product.

The normal employment at this plant for full-scale production is 325 employees. Should this plant be placed in standby for a 3-year period, all operating employees would be deprived of work. Only a

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relatively small number of employees would be required to keep the plant in standby condition.

For all these reasons, it is desirable that the Baytown copolymer plant be continued in operation.

Testimony was received indicating that there was widespread expectation that General Tire & Rubber Co. would be the successful bidder for this plant, which tended to dampen the enthusiasm of others who might have otherwise submitted proposals for purchase of the plant. Once it was learned that General Tire had not been recommended as purchaser of the plant, other potential purchasers expressed an interest in arranging to buy the plant if afforded an opportunity to do so.

Enactment of this legislation will give all who can meet the requirements of this bill adequate opportunity to submit proposals for purchase of the Baytown copolymer plant. However, the interests of the Federal Government will likewise be protected if this bill is enacted, because the Disposal Commission is under the same mandate to determine that all criteria laid down by the bill have been met before recommending any sale of the plant. There is to be no giveaway or "fire sale" of this plant.

AMENDMENTS

During the course of the hearings held by this committee's Subcommittee on Production and Stabilization, several amendments to this bill were suggested. Your committee has considered these together with other amendments deemed appropriate. It has decided to make the following amendments to S. 691.

1. As introduced, the bill would have allowed the following period for the various actions to be taken in the disposal of the Baytown copolymer plant:

(*a*) To receive proposals to purchase, 30 days after bill passed.

(*b*) To negotiate sale, not to exceed 30 days.

(*c*) To report from the Commission to the Congress, not more than 10 days after the end of the 30-day period of negotiation.

(*d*) To disapprove sale in either House of the Congress, 30 days continuous session after the Commission reports to the Congress.

(*e*) To transfer possession of the plant to the buyer, 30 days after the end of the congressional review period.

Maximum total elapsed time, 130 days (assuming the Congress stays in continuous session) after the passage of bill.

In order to assure appropriate negotiation with prospective purchasers, proposed section 25 (b) of the Disposal Act has been amended to require that this negotiation be conducted for a period of not to exceed 60 days. As noted above the bill, as introduced, provided that negotiation would occupy a period of not to exceed 30 days.

This amendment will afford the Commission an ample time within which to conduct negotiations and still allow it to terminate negotiations earlier if it reaches acceptable terms for sale at any time within the 60-day period. With this amendment, the total elapsed time may vary between 101 and 160 days, instead of the 130 days noted above.

As a corollary amendment, the 10-day period within which the Commission is to report to the Congress under the bill as introduced is made to commence on the day following the end of the actual period

of negotiation within the 60-day period allowed for negotiation. This will encourage prompt progress toward completing the process of selling the plant or, if it is not sold, placing it in standby condition.

2. As introduced, the bill required the Commission's report to the Congress to set forth steps taken to elicit proposals and proposals received; the principal terms of the sale contracted for and the Commission's recommendations thereon; and the reason why the Commission accepted less than the highest price proposed to be paid for the facility, if that be the case. Your committee deemed it advisable to require the Commission's report to contain, in addition, the following material which the Disposal Act required the Commission to include in its report to the Congress under that act:

A statement from the Attorney General setting forth findings approving the proposed disposal; the program to be followed to place the plant in standby condition in the event it is not sold; and the names of persons representing the Government or the purchaser in conducting negotiations or contracts of sale of the plant.

Coupled with other amendments made in this bill, this amendment will have the effect of requiring disposal of the Baytown copolymer plant to be made in accordance with the same general pattern as was required in the case of the remaining copolymer plants recommended for disposal by the Commission under the Disposal Act.

3. To the proposed section 25 (c) of the Disposal Act a sentence was added identical to that included in the Disposal Act of 1953 to the effect that failure to complete transfer of possession of the plant within the time allotted by this bill will not constitute a cause for rescinding the contract of sale.

4. The proposed section 25 (d) of the Disposal Act in the bill as introduced, making section 23 of the Disposal Act applicable to congressional resolutions disapproving any sale recommended by the Commission, is deleted from the bill only because it is included in proposed section 5 of the bill, which makes all sections of the Disposal Act apply to the sale of the Baytown copolymer plant except those expressly listed in the proposed section 5.

5. Proposed section 25 (e) of the Disposal Act is deleted because proposed section 5 of the bill expressly provides that section 24 of the Disposal Act (granting purchasers of other facilities the right to withdraw from purchase contracts) will not apply to the sale of the Baytown copolymer plant.

6. A new section 25 (d) of the Disposal Act has been proposed in the bill in order to make it clear that if the Baytown copolymer plant is not sold, it will be placed in standby condition generally in accordance with the provisions of section 8 of the Disposal Act.

7. Proposed section 2 of this bill will assure that the Attorney General of the United States, before the Commission's report is submitted to the Congress, will advise the Commission whether, in his opinion, the proposed sale will violate the Federal antitrust laws. This same requirement applied to the sale of other copolymer plants recommended for disposal by the Commission under the Disposal Act.

8. Proposed section 3 of this bill will allow Federal Facilities Corporation to continue to operate the Baytown copolymer plant until its transfer to a purchaser or until it is placed in standby should a purchaser fail to be found; and to sell to the public products produced at the plant.

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9. Proposed section 4 of this bill extends the Commission's life to 30 days after the latest date allowed for its last action under this bill, whether that be a transfer of the plant to a purchaser or a recommendation against sale.

10. Proposed section 5 of this bill would confirm the intention that all provisions of the Disposal Act will apply to the disposal of the Baytown copolymer plant except those expressly listed in section 5. This section will also require that any end products of this copolymer plant on hand for account of the Government and feed stocks for the plant on the date of transfer to private ownership shall be offered for sale first to the purchaser of the plant, if any. End products shall be offered at the Government sales price prevailing on the next preceding business day. Feed stocks shall be offered at not less than their cost to the Government. If the purchaser declines to purchase the end products or feed stocks mentioned above, or if no sale of the plant is made under this bill, then end products in inventory and feed stocks on hand on the date of transfer or the date upon which the plant is placed in standby condition, as the case may be, may be disposed of in such manner as the Government operating agency deems advisable at the prevailing market price for such end products and feedstocks. This provision will help compensate the plant purchaser for his exclusion from the benefits of participating in the sale of Government inventories of synthetic rubber awarded to the purchasers of other copolymer plants under the provisions of section 7 (k) of the Disposal Act.

11. Proposed section 6 of this bill would permit the Commission or its successor to lease out or sell tank cars to private persons for any purpose, or transfer them to other Federal agencies without charge for any purpose; instead of having them kept inactive on sidings in standby for 3 years. These transactions would not come back to the Congress for consideration.

12. Proposed section 7 of this bill provides that this bill will allow the disposal program to go ahead as previously planned under the Disposal Act except for the Baytown copolymer plant and the tank cars. It is also intended to refrain from granting any prospective buyer of another facility the right to withdraw from his purchase contract because of the enactment of this bill.

CONCLUSION

Since it appears to be in the public interest for the Baytown copolymer plant to remain an operating part of the synthetic-rubber industry and for the tank cars to be sold or leased, if practicable, it is recommended that this bill be enacted.

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84TH CONGRESS, 1st Session | SENATE | REPORT No. 117

DISAPPROVAL OF PROPOSED SALE OF GOVERNMENT-OWNED RUBBER-PRODUCING FACILITIES

MARCH 22 (legislative day, MARCH 10), 1955.—Ordered to be printed, with illustrations

Mr. FREAR, from the Committee on Banking and Currency, submitted the following

ADVERSE REPORT

together with the

MINORITY VIEWS

[To accompany S. Res. 76]

The Committee on Banking and Currency, to whom was referred the resolution (S. Res. 76) to disapprove the recommendation of the Rubber-Producing Facilities Disposal Commission for the sale of Government-owned rubber-producing facilities, having considered the same, report unfavorably thereon and recommend that the resolution do not pass.

PURPOSE OF RESOLUTION

Public Law 205, 83d Congress, which authorized the sales by the Rubber Producing Facilities Disposal Commission (hereinafter referred to as the Commission), provides that either House of Congress may disapprove such sales by resolution within 60 days of continuous session of the Congress following the date upon which the Commission submits its final report. This resolution is for the purpose of disdisapproving the sales recommended by the Commission in its report.

RECOMMENDATIONS OF THE COMMISSION

With respect to the relationship among the various plants offered for sale, it should be recalled that styrene and butadiene are combined to manufacture general-purpose synthetic rubber (GR–S). Butyl (GR–I) is produced from isobutylene and isoprene, both petroleum refinery products. This special-purpose butyl rubber is used primarily for inner tubes. Butadiene itself may be made from petroleum (butylene or butane) or from alcohol. One of the 27 plants offered produces dodecyl mercaptan, a chemical primarily used in producing general-purpose synthetic rubber.

Sales contracts negotiated by the Commission are summarized in pertinent part as follows:

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Copolymer (GR–S) plants

Location	Assigned annual capacity	Gross book value Aug. 31, 1954	Net book value Aug. 31, 1954	Purchaser	Price	Terms	Product available to small business
	Long tons						
Baton Route, La. (Plancor 876)	49,000	$9,268,331	$3,397,432	Copolymer Corp	$5,000,000	25 percent on closing date.[1]	10 percent.
Akron, Ohio (Plancor 127)	30,000	7,452,230	2,138,181	The Firestone Tire & Rubber Co	2,250,000	25 percent on closing date, balance in 10 equal annual installments.	20 percent.
Lake Charles, La (Plancor 1056)	99,600	16,427,973	5,794,918	do	11,650,000	do	Do.
Port Neches, Tex. (Plancor 983)	90,000	22,049,192	8,034,950	Goodrich-Gulf Chemicals, Inc	13,000,000	do	Approximately 15,000 long tons per year.
Akron, Ohio (Plancor 126)	15,200	7,964,319	3,076,797	Goodyear Synthetic Rubber Corp	2,075,000	do	10 percent.
Houston, Tex. (Plancor 956)	99,600	15,503,797	5,982,370	do	11,889,000	do	Do.
Louisville, Ky. (Plancor 1278)	44,000	8,982,730	4,970,401	American Synthetic Rubber Corp	2,340,000	25 percent on closing date.[2]	4,000 to 15,000 long tons per year.
Los Angeles, Calif. (Plancor 611)	89,000	15,809,998	7,238,195	Shell Chemical Corp	(3)	25 percent on closing date, balance in 10 equal annual installments.	Percentage in line with proportion they represent of total market.
Borger, Tex. (Plancor 982)	63,000	11,534,086	4,637,707	Phillips Chemical Co	4,525,000	Cash	Major portion.
Naugatuck, Conn. (Plancor 129)	22,200	10,403,505	3,328,285	United States Rubber Co	3,200,000	35 percent on closing date, balance in 10 equal annual installments.	50 to 60 percent to small business enterprises and other users.
Port Neches, Tex. (Plancor 983A)	88,000	14,778,074	6,558,312	Texas-United States Chemical Co	11,500,000	25 percent on closing date, balance in 10 equal annual installments.	20 percent.

[1] 3 percent 1st year, 3 percent 2d year, 7 percent 3d year, 8 percent 4th year, 10 percent 5th year, 12 percent 6th year, 14 percent 7th year, 14 percent 8th year, 14 percent 9th year, 15 percent 10th year.

[2] 2 percent 1st year, 2 percent 2d year, 2 percent 3d year, 8 percent 4th year, 8 percent 5th year, 15 percent 6th year, 15 percent 7th year, 16 percent 8th year, 16 percent 9th year, 16 percent 10th year.

[3] Price of $30 million includes this plant as well as styrene plant (Plancor 929) and butadiene plant (Plancor 963) at Los Angeles and Torrance, Calif., respectively.

Butyl rubber (GR–I) plants

Butyl rubber (GR–I) plants

Plant location	Assigned annual capacity	Gross book value Aug. 31, 1954	Net book value Aug. 31, 1954	Purchaser	Price	Terms
	Long tons					
Baytown, Tex. (Plancor 1082)	43,000	$24,518,422	$5,452,105	Humble Oil & Refining Co	$17,500,000	Cash.
Baton Rouge, La. (Plancor 572)	47,000	27,977,434	6,416,161	Esso Standard Oil Co	14,857,000	Do.

Butadiene plants—petroleum

Location	Assigned annual capacity	Gross book value, Aug. 31, 1954	Net book value, Aug 31, 1954	Purchaser	Price	Terms	Disposition of product
	Short tons						
Lake Charles, La. (Plancor 706)	63,000	$18,702,207	$3,511,613	Petroleum Chemicals, Inc. (Cities Service Co. and Continental Oil Co.).	$16,000,000	Cash	To adjacent copolymer plant.
Baton Rouge, La. (Plancor 152)	23,000	7,780,541	1,108,308	Copolymer Corp	5,000,000	25 percent on closing date.[1]	Do.
Baytown, Tex. (Plancor 485)	46,000	19,288,496	3,248,449	Humble Oil & Refining Co	8,886,000	Cash	80 percent to copolymer plants at Louisville and Baton Rouge.
Port Neches, Tex. (Plancor 933)	190,000	59,821,029	10,320,325	{Goodrich-Gulf Chemicals, Inc. (B. F. Goodrich Co. and Gulf Oil Corp.). Texas-U. S. Chemical Co. (the Texas Co. and U. S. Rubber Co.).}	[2] 53,000,000	25 percent on closing date, balance in 10 equal annual installments.	Approximately 43,000 short tons available on open market.
Borger, Tex. (Plancor 484)	74,000	41,585,365	5,919,405	Phillips Chemical Co	19,100,000	Cash	To adjacent copolymer plant.
Houston, Tex. (Plancor 1063)	90,000	31,879,360	6,607,873	Food Machinery & Chemical Corp	24,197,000	25 percent on closing date, balance in 10 equal annual installments.	Do.
Torrance, Calif. (Plancor 963)	48,000	20,672,471	3,268,073	Shell Chemical Corp	[3]	do	Do.
El Segundo, Calif. (Plancor 1593)	[4] 50,000	7,832,371	715,488	Standard Oil Co. of California	1,500,000	Cash	Butadiene to copolymer plants or butadiene-butylene mixture to butadiene plants.

[1] 3 percent 1st year, 3 percent 2d year, 7 percent 3d year, 8 percent 4th year, 10 percent 5th year, 12 percent 6th year, 14 percent 7th year, 14 percent 8th year, 14 percent 9th year, 15 percent 10th year.

[2] Each purchaser is to pay 50 percent of this amount for undivided half interest.

[3] Price of $30 million includes this plant as well as styrene plant (Plancor 929) and copolymer plant (Plancor 611), Los Angeles, Calif.

[4] Equivalent butadiene (crude butadiene and normal butylenes).

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Butadiene plant—alcohol

Plant location	Assigned annual capacity	Gross book value, Aug. 31, 1954	Net book value, Aug. 31, 1954	Purchaser	Price	Terms
Kobuta, Pa. (Plancor 483)	*Short tons* 80,000	$45,584,297	$10,466,580	Koppers Co., Inc.	$2,000,000	Cash.

Styrene plant

Plant location	Assigned annual capacity	Gross book value, Aug. 31, 1954	Net book value, Aug. 31, 1954	Purchaser	Price	Terms
Los Angeles, Calif. (Plancor 929)	*Short tons* 62,500	$15,154,071	$3,315,119	Shell Chemical Corp	(1)	25 percent on closing date, balance in 10 equal annual installments.

[1] Price, $30 million, includes this plant as well as butadiene plant (Plancor 963) and copolymer plant (Plancor 611), Torrance, Calif., and Los Angeles, Calif., respectively.

Dodecyl mercaptan plant

Plant location	Assigned annual capacity	Gross book value, Aug. 31, 1954	Net book value, Aug. 31, 1954	Purchaser	Price	Terms
Naugatuck, Conn. (Plancor 543)	*Short tons* 2,400	$383,304	$135,860	United States Rubber Co.	$60,000	Cash.

Miscellaneous facilities

Location of facilities	Gross book value, Aug. 31, 1954	Net book value, Aug. 31, 1954	Purchaser	Price	Terms
Corpus Christi, Tex	$1,295,194	$932,131	Great Southern Chemical Corp	$300,000	2 percent 1st year, balance over succeeding 9 years in equal quarterly installments.

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In addition, each contract for disposal of a rubber-producing facility contains a "national security clause" to insure that for the next 10 years the facilities will be kept in such condition that they can be readily available for production for national defense needs. The text of the "national security clause" follows:

SECTION 24. *National Security Clause.* The Purchaser accepts the terms, conditions, restrictions, and reservations contained in Section 7 (h) of the Act, and this sale is made expressly subject to, and the Purchaser, for itself, its successors and assigns, hereby agrees to purchase the Facility subject to, the following national security clause, which shall be effective for a period of ten years from the time of transfer:

(a) The Purchaser will maintain at all times in accordance with sound practice in the industry, normal wear and tear excepted, the Facility, together with all replacements thereof and additions and improvements thereto, so that the same shall be, at all times during said ten-year period, either in a condition (1) currently to produce _____ _____ at a rate of not less than _____ tons per year (assigned annual capacity), or (2) so that it can be placed in a condition to produce _____ _____ at such rate of assigned annual capacity within a period of 180 days after written notice from the Government to activate the plant or to reconvert same, as the case may be: provided, however, that such 180-day period shall be extended, upon written approval to the Purchaser from the Government, for such additional period as shall be necessary in the event the Purchaser is unable to comply therewith by reason of its inability to procure essential materials, unavailability of labor, act of God, fire, earthquake, flood, explosion, storm, strike, or other cause or causes reasonably beyond its control; and provided further, that in the event of major damage to or complete destruction of the Facility where the Purchaser is without fault or negligence, the Purchaser shall immediately notify the Government of the happening and of the cause or causes occasioning same, whereupon the Government will cause an examination to be made and will thereafter notify the Purchaser promptly of the extent, if any, that restoration of the assigned annual capacity so destroyed or damaged must be made, such restoration to be effected at Purchaser's expense within a reasonable period of time to be agreed upon between the Purchaser and the Government. However, in any case where such restoration is so deemed necessary by the Government, the Purchaser may elect to invoke the privilege of substituting new separate facilities pursuant to and in accordance with paragraph (g) or (h) of this Section 24. Such restoration shall not be required in the event of major damage to or complete destruction of the Facility caused directly or indirectly by (1) hostile or warlike action in time of peace or war, including action in hindering combating or defending against an actual, impending or expected attack, (i) by any government or sovereign power (*de jure* or *de facto*), or by any authority maintaining or using military, naval or air forces; or (ii) by military, naval or air forces; or (iii) by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing atomic fission or radioactive force shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces; (2) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence.

(b) The Government shall have the right to conduct an inspection or survey of the Facility at any time, subject to reasonable prior written notice thereof to the Purchaser, for the purpose of determining whether the Purchaser is in default under this Section 24.

(c) Failure to maintain the Facility as required above, or failure to observe any of the other conditions of this Section 24, shall give the Government the unconditional right to immediate possession and use of the Facility for the purpose of restoring it to a condition to produce at the rate of such assigned annual capacity, but all cost incidental to such restoration shall be borne exclusively by the Purchaser.

(d) The Purchaser will not sell, lease, mortgage or otherwise encumber the Facility without expressly making such sale, lease, mortgage or encumbrance subject to the provisions of this Section 24 for the remainder of its term. It is the express intention of both the Purchaser and the Commission that the covenants herein contained shall be binding on subsequent owners or occupants of the Facility, and that the Purchaser shall remain liable for any violations of said covenants by such subsequent owners or occupants unless the Purchaser shall have been expressly released in writing from such obligation by the Government.

(e) The Government in exercising its rights and in carrying out its obligations under this Section 24 shall act through such officer, department or agency of the Government as shall be designated by duly constituted authority.

(f) During the term of this Section 24, the Purchaser shall preserve the "Asset Property Records" of the Operating Agency as of the time of transfer and shall maintain and keep current thereafter an adequate record of the fixed assets of the Facility; the Purchaser shall also preserve until the expiration of said term all drawings, tracings, prints, and other documents in its possession (hereinafter called documents) pertaining to the construction, modification, maintenance, or theory amd method of operation of the Facility. At any time within said term, upon request of the Government, the Purchaser shall make available to the Government such of the aforesaid records, documents, or any designated portion thereof as shall be essential to the Government for the purposes of paragraphs (b) and (c) of this Section 24 and shall upon request from time to time furnish copies thereof to the Government at the Government's expense. The Government will maintain confidential such documents and copies thereof as the Purchaser shall designate, and, to the extent requested by the Purchaser, shall examine them only at the Facility. The Purchaser may offer to the Government any of such records and documents that it considers to be obsolete, and the Purchaser will be relieved of the obligation to preserve them if the Government accepts the offer or grants permission for destruction or other disposition.

(g) The Purchaser may at any time during the term of this Section 24 notify the Government in writing that it desires to substitute for all or any part of the facilities orginally purchased from the Government, new separate facilites of equivalent productive capacity for the production of_____ or for the production of a different product which must be at least as satisfactory, and be generally acceptable for the same general uses and purposes, as_____, and upon receiving approval in writing thereto from the Government, may proceed to effect such substitution. In such event, all of the terms and provisions of this Section 24 shall apply with equal force and effect to such substituted facilites and shall no longer apply to the facilities to which they applied originally.

(h) In lieu of proceeding as permitted by paragraph (g) of this Section 24, the Purchaser may at any time during the term of this Section 24 substitute for all or any part of the facilities originally purchased from the Government, new separate facilites of equivalent productive capacity for the production of_____ or for the production of a different product which must be at least as satisfactory, and be generally acceptable for the same general uses and purposes, as_____. Sixty days after written notice by the Purchaser to the Government of the completion of such new separate facilities, all of the terms and provisions of this Section 24 shall apply with equal force and effect to such new separate facilities and shall no longer apply to facilitties for which the new separate facilites are to be substituted, unless within such 60-day period the Government notifies the Purchaser in writing that it disapproves the proposed substitution, in which event the terms and provisions of this Section 24 shall remain applicable to the facilities to which they applied originally.

(i) Nothing in this Section 24 shall be construed as affecting obligations of the Purchaser under any other provision of this agreement, except that in any case of inconsistency or ambiguity, the provisions of this Section 24 shall, to the extent that they impose greater obligations on the Purchaser, be deemed controlling.

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COMMITTEE VIEWS

Your committee has studied the Commission's report, we have examined this report in light of Public Law 205, we have held hearings to elicit both favorable and unfavorable reaction to the work of the Commission. After thorough consideration of the law, the report, and public and private witnesses, your committee believes that the Commission has complied substantially with Public Law 205, 83d Congress, and can see no reason to disapprove the entire recommended sales program.

The law under which the Commission worked contained four major criteria:

1. That the disposal program be designed best to afford small-business enterprises and users the opportunity to obtain a fair share of the end products of the facilities sold and at fair prices;
2. That the sales program provide for the development of a free, competitive, synthetic rubber industry;
3. That full fair value be obtained for the facilities sold; and
4. That the disposal plan be consistent with the national security.

These criteria were observed by the Commission, and each is discussed separately below.

Fair share to small business at fair prices

As shown by the table, above, each sales contract involving GR–S and butyl rubber plants contains a provision relating to the sale of products to small users at fair prices. The adequacy and the sincerity of these provisions were demonstrated to the committee through the Commission's report and testimony and through testimony of purchasers of these plants. We are convinced that the Commission has complied with this criterion of the law.

Competitive synthetic-rubber industry

The Commission worked closely with the Attorney General throughout the negotiating period and, as provided by law, obtained from him a statement regarding competitive implications of the disposal plan. The Attorney General's statement is set forth in its entirety below:

STATEMENT OF THE ATTORNEY GENERAL AS REQUIRED BY SECTION 9 (A) (4) OF THE RUBBER PRODUCING FACILITIES DISPOSAL ACT OF 1953 (50 U. S. C. APP. 1941; 67 STAT. 408)

The Attorney General is required under section 9 (a) (4) of the Rubber Producing Facilities Disposal Act of 1953 to submit to the Disposal Commission a statement setting forth findings "approving the proposed disposals in accordance with the standards set forth in section 3 (c)" of the Disposal Act. Section 3 (c) of the act requires of the disposal program that it "best foster the development of a free, competitive synthetic-rubber industry."

I. COPOLYMER PLANT DISPOSAL

The Commission proposes to sell 11 copolymer plants which manufacture GR–S rubber to 9 purchasers. The largest share of capacity which would come into the possession of 1 company would be approximately 19 percent of the industry's capacity. Four of the purchasers of copolymer plants are corporations which may be described as joint ventures since the capital stock of these corporations is owned by two or more companies. These purchasers include Copolymer Corp., comprised of 7 of the smaller tire-manufacturing companies; American Synthetic

Rubber Corp., made up of 28 rubber fabricating companies and American Cyanamid Co.; Goodrich-Gulf Chemicals, Inc., owned equally by B. F. Goodrich Co. and Gulf Oil Corp.; and Texas-U. S. Chemical Co., owned equally by the Texas Co. and U. S. Rubber Co. The distribution of copolymer-plant capacity among the nine purchasers is shown in the following table:

TABLE No. 1.—*Proposed distribution of GR–S copolymer plant capacity*

Company	Number of plants	Annual capacity (thousands of long tons)	Percent of total capacity
Firestone Tire & Rubber Co.	2	129.6	18.8
Goodyear Synthetic Rubber Corp.	2	114.8	16.6
Texas-U. S. Chemical Co.	1	88.0	12.8
United States Rubber Co.	1	22.2	3.2
Goodrich-Gulf Chemicals, Inc.	1	90.0	13.1
Shell Chemical Corp.	1	89.0	12.9
Phillips Chemical Co.	1	63.0	9.1
Copolymer Corp.	1	49.0	7.1
American Synthetic Rubber Corp.	1	44.0	6.4
Total	11	689.6	100.0

Theoretically the Commission might have been able to achieve a broader base of competition by avoiding the sale of more than one copolymer plant to a single purchaser. However, as a practical matter, the Commission was unable to avoid the sale of multiple facilities to some firms since the close physical association of certain copolymer plants with the facilities owned by the purchaser made independent operation impracticable. Furthermore, with respect to every copolymer plant recommended for sale (except the one at Los Angeles sold to Shell Chemical Corp.), the Commission received only one bid. In those cases the buyer is either the present operator or a new corporation in which the present operator participates. This is not unexpected as at the hearings resulting in the disposal legislation it was pointed out that the most likely purchasers for copolymer plants would be the present operators. The legislative history of the act also appears to indicate that Congress contemplated that each of the Big Four rubber companies would purchase at least one copolymer plant. Congress specifically rejected an attempt to place limitations on the number of plants which any single company could purchase.

The distribution of copolymer plant capacity contemplated by the disposal program creates a structure of ownership which provides a basis for the development of effective competition in the manufacture and sale of GR–S type synthetic rubber. This pattern of copolymer plant disposal, coupled with the contractual commitments of the purchasers to sell to small users and others a stipulated percentage of actual or potential production, provides adequate assurance that there will be a substantial volume of GR–S constantly available for sale in the open market and that small independent rubber fabricators will have access to adequate supplies of GR–S.

While the sale to Shell Chemical Corp. of the GR–S plant at Los Angeles places within the control of the purchaser all of the GR–S capacity on the west coast, there are present in this market countervailing factors which make such disposal consistent with the competitive objectives of the act. The principal consumers of natural and synthetic rubber in the west coast market are the major tire companies, each of which owns and operates fabricating plants in the Los Angeles area. Inasmuch as each of these companies will acquire a wholly or partly owned gulf coast copolymer plant under the disposal program, it is to be expected that the Los Angeles fabricating plants of each company will be supplied with GR–S produced by such copolymer plants. The purchaser of the GR–S facility at Los Angeles, in order to make the fullest use of his productive potential, must penetrate the captive market represented by the fabricating plants owned by the major tire companies in addition to building up its own market in the noncaptive area. Such a market structure should provide hard competition for the purchaser of the Los Angeles facilities.

Thus, in my opinion, the proposed sales of the copolymer plants will best foster the development of a free competitive synthetic rubber industry, as required by section 3 (c) of the act, and accordingly are hereby approved.

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II. BUTYL RUBBER PLANT DISPOSAL

The Commission proposes to sell the Baton Rouge, La., and the Baytown, Tex., butyl rubber plants to Esso Standard Oil Co. and Humble Oil & Refining Co., respectively. Esso is a wholly owned subsidiary of Standard Oil Co. (N. J.), while Humble is an approximately 87 percent owned affiliate of the same company. In addition, Standard Oil Development Co., another Standard subsidiary, holds patents covering substantially all features of the manufacture of butyl rubber.

While the Commission has been cognizant of the problems inherent in the sale of both butyl rubber plants to the Standard family of corporations, it should be noted that (*a*) no other bids were received for these facilities and (*b*) it was essential that the Commission dispose of at least 1 of the 2 butyl plants in order to meet the minimum butyl rubber capacity sale requirements fixed by the act. In August 1954 the Commission was advised by the Department of Justice of the antitrust considerations present in the situation. It was suggested that in view of the difficulties faced by the Commission in the disposal of the butyl plants, a possible solution of this problem from the antitrust viewpoint might be found in the use of safeguards designed to permit entry into the butyl field by parties unaffiliated with the Standard family of corporations. On the basis of this advice the Commission undertook negotiations with Esso Standard Oil Co. for the purpose of including in the contract of sale of the Baton Rouge plant certain clauses setting out such safeguards. In the contract of sale of the Baton Rouge plant Esso agrees to sell the facility under certain terms and conditions, during a period of 3 years after the plant is transferred to Esso, provided that butyl-rubber-producing facilities of at least 43,000 long tons of annual capacity in the aggregate shall not have been substantially completed in the United States by a party not affiliated with Standard prior to the receipt of an offer to purchase the plant. It is further provided that the price on such resale shall be not less than the price paid by the purchaser, less depreciation at the rate of 5 percent per annum, plus interest at the rate of 4 percent per annum on Esso's unamortized investment, and subject to adjustments for additions and retirements subsequent to Esso's acquisition of the plant. Esso also agrees to transfer the plant within 1 year after date of the contract of resale. The prospective buyer from Esso will acquire a license from Standard Oil Development Co. under its butyl rubber patents. Esso further agrees to supply feedstocks to such prospective purchaser to the extent such are available at Esso's Baton Rouge refinery and not required for Esso's own operations.

There are a number of compelling and persuasive reasons which support the Commission's view that both butyl rubber plants be sold to the present bidders. First, should the Commission fail to sell one of the plants the act requires that the plant be shut down for a period of 3 years. During this period Esso would have ample opportunity to develop new markets and to build a new and more economical plant before any new competitor could acquire and place the Government-owned facility in operation. Second, failure to sell one of the butyl rubber plants would take the plant out of production and place the burden of supplying the present demand for butyl rubber upon the one plant remaining in operation. The Baytown plant can produce 43,000 long tons of butyl rubber per year, and the Baton Rouge plant can produce 47,000 long tons per year. Only approximately 75 percent of the present demand could be supplied by either of the butyl plants above, which would precipitate a serious shortage of butyl rubber in the domestic market, and would adversely affect the business of a good many large and small fabricators of butyl rubber. Third, under these circumstances the purchaser of one butyl plant would become the sole producer of butyl rubber in the United States, and the antitrust implications which would result from such a sale would be precisely the same as if both plants were sold to the same purchaser, except that there would be a serious shortage of butyl rubber. Fourth, Standard Oil Co. (N. J.), through its affiliate, Standard Oil Development Co., has consistently offered to license its butyl rubber patents at reasonable royalty rates to anyone proposing to build a butyl rubber plant, and has issued such licenses to Goodrich-Gulf Chemicals, Inc., and Petroleum Chemicals, Inc. It has also offered to provide at reasonable rates technical information and know-how to any licensee proposing to build a butyl rubber plant, and has furnished its licensees with current technical information concerning the developments in the field of butyl rubber.

Thus, in my opinion, the proposed sales of butyl plants to affiliates of Standard will best foster the development of a free competitive synthetic rubber industry, as required by section 3 (c) of the act, and accordingly are hereby approved.

III. BUTADIENE PLANT DISPOSAL

The Commission's disposal program provides for the sale of each of the eight petroleum butadiene plants as set forth in the table below:

TABLE No. 2.—*Proposed disposition of butadiene plant capacity*

Company	Number of plants	Assigned annual capacity (short tons)	Percent of total capacity
Goodrich-Gulf Chemicals, Inc.	1	190,000	34.6
Texas-U. S. Chemical Co.			
Food Machinery & Chemical Co.	1	90,000	16.4
Phillips Chemical Co.	1	74,000	13.5
Petroleum Chemicals, Inc.	1	63,000	11.5
Humble Oil & Refining Co.	1	46,000	8.3
Copolymer Corp.	1	23,000	4.2
Shell Chemical Co.[1]	1	63,000	11.5
Standard Oil Co. of California [1]	1		
Total	8	549,000	100.0

[1] The Government operates these plants in tandem and the combined capacity is 63,000 tons. For contract purposes, independent operation was assumed by the Commission and Torrance (Shell) was assigned a capacity of 48,000 tons and El Segundo (Standard Oil of California) 50,000 tons of equivalent butadiene (crude butadiene and butylenes).

In order to show the total industry capacity, there should be added to the table above the butadiene capacity now privately owned and operated and amounting to 49,000 short tons. With this addition the total distributive pattern of butadiene capacity in the country will be as set forth in the table below:

TABLE No. 3

Company	Number of plants	Assigned annual capacity (short tons)	Percent of total capacity
Goodrich-Gulf Chemicals, Inc.	1	190,000	31.8
Texas-U. S. Chemical Co.			
Food Machinery & Chemical Co.	1	90,000	15.0
Phillips Chemical Co.	1	74,000	12.4
Petroleum Chemicals, Inc.	1	63,000	10.6
Humble Oil & Refining Co.	1	46,000	7.7
Copolymer Corp.	1	23,000	3.8
Shell Chemical Co.[1]	1	63,000	10.6
Standard Oil Co. of California [1]	1		
Union Carbide & Carbon Corp.[2]	1	8,000	1.3
Dow Chemical Corp.[2]	1	8,000	1.3
Enjay Corp.[2]	1	33,000	5.5
Total	11	598,000	100.0

[1] The Government operates these plants in tandem and the combined capacity is 63,000 tons. For contract purposes, independent operation was assumed by the Commission and Torrance (Shell) was assigned a capacity of 48,000 tons and El Segundo (Standard Oil Co. of California) 50,000 tons of equivalent butadiene (crude butadiene and butylenes).

[2] Part of Union Carbide's capacity is captive, Dow's is 100 percent captive, but Enjay's is 100 percent sold to others.

The distribution of butadiene plant capacity contemplated by the disposal program creates a structure of ownership which, while not entirely free of all elements of concentration and vertical integration, provides a reasonable expectation for the development of effective competition in the manufacture and sale of butadiene. In 5 out of the 8 proposed sales vertical integration will occur in that there will be single ownership of both butadiene and copolymer (GR–S) facilities. However, these five may be expected to compete with each other without any one or more being in a position to exercise unreasonable control over the manufacture of either butadiene or GR–S.

It should also be noted that, with respect to the demand for butadiene, there is at present almost no small-business requirement. The demand is almost entirely

created by the copolymer plant operators. In this connection, it appears that approximately half the total butadiene capacity to be sold is in excess of the butadiene plant purchaser's own requirements. Since most of the butadiene plants are physically located adjacent to copolymer plants, it may be expected that such adjacent plants will normally obtain their supply from neighboring butadiene plants. This will cut down the open market supply of butadiene to some extent. However, the distributive pattern, available supply, and the contractual safeguards provided in connection with the sale of the Port Neches plant, hereinafter discussed, provide a sound basis for competition as well as protection for small business should its demand for butadiene increase.

The Commission proposes to sell only one plant to any one purchaser. The Port Neches butadiene plant, which is the largest, is to be sold to Goodrich-Gulf Chemicals, Inc., and Texas-U. S. Chemical Co. Each of these jointly owned companies will acquire an undivided half-interest in the entire plant. The plant will be operated as a processing facility through a corporation to be owned by the joint purchasers in equal shares. Each of the joint purchasers will separately acquire and independently furnish feedstocks to the processing company for conversion into butadiene. The resultant butadiene will then be delivered by the processing company to the joint owners in quantities equivalent to the yield from the feedstocks furnished by each company and will be independently marketed.

Inasmuch as the design and construction of this plant was found to permit division of the Port Neches plant, with a certain amount of adjustment, into two separate units of substantially equal capacity, the Commission was advised by the Department of Justice in February 1954 that the sale of each unit to a separate purchaser would be more consistent with the development of a competitive industry than would the sale of the entire plant to a single company. However, no bids on this divided basis were filed with the Commission.

The prospective purchasers contend that the proposed plan of acquisition and operation would achieve the same competitive results as if the plant were physically divided into two separate operating units and these were sold to different purchasers. The Commission concurs in the view expressed by the joint bidders for Port Neches that there would be genuine competition between them under the scheme of operations contemplated.

The Commission was advised by the Department of Justice in August 1954 that the proposed sale of the Port Neches butadiene plant to the joint venture comprised of four large companies in the petroleum and rubber fabricating industries posed a number of potential antitrust problems. The Commission continued its negotiations with the various bidders and on December 15, 1954, advised the Department of Justice that the above joint bid represented the only firm offer which the Commission had for this plant. In view of this, and because (*a*) the sale of this plant was considered by the Commission to be essential to any disposal program, (*b*) the competitive operation of the undivided plant was feasible and avoided vesting control over the entire plant capacity in but one buyer, and (*c*) the purchasers agreed to enter into a commitment to make approximately 24 percent of the plant's capacity available for sale in the open market, I concluded that the Commission was not prohibited from continuing negotiations looking to the proposed sale of the Port Neches butadiene plant to Goodrich-Gulf Chemicals, Inc., and Texas-U. S. Chemical Co., and accordingly so advised the Commission on December 16, 1954.

This, in my opinion, the proposed sales of butadiene plants will best foster the development of a free competitive synthetic rubber industry, as required by section 3 (c) of the act, and, accordingly, are hereby approved.

IV. STYRENE PLANT DISPOSAL

The domestic styrene industry is comprised of five producing companies in addition to the Government. It is estimated that Shell Chemical Corp., the purchaser of the Los Angeles styrene plant, will obtain approximately 12 percent of the industry's capacity and thereby become the fourth largest producer of styrene in the United States. This prospective purchaser will have capacity for the production of styrene considerably in excess of the requirements of the adjacent copolymer plant, also to be acquired by the same purchaser. Shell has indicated that such excess capacity will be available for sale to other styrene users, both on the west coast and gulf coast. The purchaser intends to maintain stocks in both such areas to serve styrene consumers, principally operators of GR–S plants. In addition, the sale adds a new source of styrene supply for users of this raw material in the manufacture of polystyrene plastic.

Thus, in my opinion, the proposed sale of the styrene plant will best foster the development of a free competitive synthetic-rubber industry, as required by section 3 (c) of the act, and, accordingly, is hereby approved.

V. ALCOHOL PLANT DISPOSAL

The recommended sale of the alcohol-butadiene plant of 80,000 short tons' capacity at Kobuta, Pa., to the Koppers Co., Inc., the only bidder for either of the two alcohol butadiene plants, presents no antitrust problems. In a normal alcohol market, alcohol-butadiene, because of the high cost of its raw material, is noncompetitive with petroleum butadiene. The Commission does not expect that this plant will be operated other than sporadically. When it is operated, it will afford one more source of butadiene, introducing further competition into the field of butadiene production.

Thus, in my opinion, the proposed sale of this alcohol-butadiene plant to the Koppers Co., Inc., will best foster the development of a free competitive synthetic-rubber industry, as required by section 3 (c) of the act, and, accordingly, is hereby approved.

VI. DODECYL MERCAPTAN (DDM) PLANT DISPOSAL

The Government-owned plant at Naugatuck, Conn., is the only one of its type in the country producing dodecyl mercaptan (DDM), a chemical used primarily in the production of hot GR–S. The need for this chemical has decreased as more capacity is converted from the production of hot GR–S to cold GR–S. (At present 75 percent of capacity is for the production of cold GR–S. This trend is likely to continue under private ownership.) Another chemical is being privately produced as a substitute for DDM. The contract of sale recommended by the Commission with United States Rubber Co. contains the commitment by the purchaser to make available up to 60 percent of the output of the plant to small-business enterprises and other users. United States Rubber Co. was the sole bidder for the plant.

Thus, in my opinion, the proposed sale of this dodecyl mercaptan (DDM) plant to the United States Rubber Co. will best foster the development of a free competitive synthetic rubber industry, as required by section 3 (c) of the act, and, accordingly, is hereby approved.

VII. SALE OF MISCELLANEOUS FACILITIES

The proposed sale to the Great Southern Chemical Corp. of the miscellaneous equipment owned by the Government and located at Corpus Christi, Tex., not capable by itself of producing any end product, poses no antitrust problems.

Thus, in my opinion, the proposed sale of this miscellaneous equipment to the Great Southern Chemical Corp. will best foster the development of a free competitive synthetic rubber industry, as required by section 3 (c) of the act, and, accordingly, is hereby approved.

(Signed) HERBERT BROWNELL, Jr.,
Attorney General.

Dated January 17, 1955.

In addition to this opinion, the Attorney General's representative testified before the committee that the Department of Justice would maintain its vigilance in enforcing the antitrust laws. With these assurances the committee believes that the disposal program is designed to best foster the development of a free competitive synthetic rubber industry. In order that there be no doubt in this regard, however, the committee requests the Department of Justice to report to the Congress each year for the first 10 years following sale of the facilities. These reports should state the Attorney General's findings and opinions with respect to the competition, or lack of competition, existing in the synthetic rubber industry during the year of the report. In commenting upon competition in the synthetic rubber industry, the Attorney General should comment upon the extent to which small businesses are receiving a fair share of the end products at fair prices, as contemplated by Public Law 205 and the sales contracts.

Full fair value

Public Law 205 did not precisely define "full fair value." Legislative history shows, however, that such value should be determined by the Commission on the basis of sound business judgment. This "full fair value" was to be arrived at without necessary regard to original cost or replacement cost, and with no regard to book value.

Pertinent to this criterion is the following excerpt from the Commission's report to Congress:

A fundamental precept of the disposal program was that the sale of the facilities should return to the Government a price that would truly reflect the value of the facilities as a going industry. Accordingly, one of the criteria of the act is "That full fair value for the facility or facilities will be received by the Government, taking into consideration the policy set forth in section 2 of this Act."

No final definition was adopted by Congress or written into the act as to what recovery by the Government would constitute full fair value. That was left for determination by the Commission, subject to review by Congress.

A comparison should be made with the dollar amount which is "the unrecovered investment of the American people" in the synthetic rubber program, first placed before Congress by the Administrator of the Reconstruction Finance Corporation in the report of March 1, 1953. This figure presented the premise that the total program deficit plus the net book value [1] of all fixed assets resulted in the unrecovered investment in the synthetic rubber program. This deficit included losses from operation as well as standby depreciation and disposal losses from the sale of other synthetic rubber facilities plus other nonoperating losses. Although the Commission did not adopt the unrecovered cost as a standard of full fair value, the Commission strove to recoup for the Nation as much of remaining investment in the program as it possibly could. These figures, when projected to the possible transfer date of April 30, 1955, reflect a total unrecovered investment of $272,718,800. The total of this Commission's recommended sales (less current assets) is estimated to be, as of April 30, 1955, $263,643,000, or 96.6 percent of the unrecovered investment in the entire synthetic rubber program with no regard or credit for the unsold facilities and equipment which have a projected net book value as of April 30, 1955, of $18,557,000.

The Commission gave no consideration to the net book value of the facilities for which contracts of sale were executed. It is interesting to note, however, that the total of the sales contracts is estimated to produce 240 percent of the net book value of these fixed assets, as of April 30, 1955.

An appraisal of the facilities, except for the alcohol-butadiene plants, was made in 1952 for the Reconstruction Finance Corporation by the Ralph M. Parsons Co., an independent engineering firm. These unpublished reports were available to the Commission and gave replacement values for the facilities after credit for actual depreciation and scientific and functional obsolescence. These figures have been projected by the Commission's staff to the possible transfer date of April 30, 1955. This adjusted total, which does not include the unsold facilities and equipment, is $263,556,000. The contracts of sale recommended by the Commission for the same facilities total an estimated $261,343,000, which is 99.2 percent of the estimated replacement cost less depreciation and obsolescence. The figure of $261,343,000 is composed of total fixed contract prices of $257,529,000 plus a conservative estimate of $3,814,000 for net capital additions, and does not include current assets.

The act clearly contemplates that in determining full fair value, consideration shall be given "to the development within the United States of a free, competitive, synthetic-rubber industry." The Commission has taken this factor into consideration.

Because of the time limitations under the Disposal Act, the Commission had the task of acquainting itself in a short period with the economics of the synthetic-rubber and allied industries. A competent industrial engineering firm was employed to assist in this problem. At the outset, the Commission reviewed the results of Government operation of the program.

[1] The net book value included all fixed assets which in turn includes certain fixed assets not disposed of by this program.

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The following table gives the results of operations since the program's inception:

	Net income (+) or net loss (−)
Fiscal years 1943 to 1946	−$195, 342, 592
Fiscal year ended:	
June 30, 1947	+14, 789, 461
June 30, 1948	+1, 536, 016
June 30, 1949	−702, 006
June 30, 1950	−1, 794, 621
June 30, 1951	+11, 927, 793
June 30, 1952	+16, 113, 542
June 30, 1953	+59, 929, 609
June 30, 1954	+41, 778, 866
Total loss after depreciation, shutdown, and reactivation expenses, period May 1942 through June 30, 1954	−51, 763, 932
Additional depreciation and other operating cost adjustments, period May 1942 through June 30, 1954	−70, 921, 181
Nonoperating losses, including losses from sale of plants, period May 1942 through June 30, 1954	−72, 120, 690
Total deficit	−194, 805, 803

In addition to the "full fair value" criterion of the act, other criteria gave the Commission certain responsibilities in connection with the continued operation of the rubber-producing facilities after disposal. Because of these responsibilities and to assist it in the evaluation of the purchase proposals, the Commission felt warranted in requesting from the bidders a complete disclosure as to how the plants would operate after purchase and a complete breakdown of the factors used in arriving at the price named in each proposal.

In spite of the fact that this approach was considered an innovation in negotiating proceedings between a buyer and a seller, the bidders, almost without exception, cooperated by giving the information needed.

Conferences were held with the bidders during which our questions were answered. The questions covered every known factor pertaining to the operation of a going business and dealt with items such as estimated rate of operation, raw materials costs, cost of conversion, depreciation rates, research, selling price of end products, and working capital requirements. With information thus obtained, the Commission was in an excellent position to evaluate the buyer's own idea of the earning power of the plant on which he was bidding.

While other standards, such as original cost, replacement cost, depreciated values, and the precedent of previous Government surplus property sales were considered, it was the decision of the Commission that because the disposal program made possible the purchase of a going profitable business, for negotiating purposes, potential earning power should be the prime factor in the establishment of an appropriate price. In its earning power studies, the Commission did not give usual weight to the past earnings of the facilities. These plants had been operated as one integrated program. For example, for reasons of economy and efficiency, many costs were averaged and production was scheduled, for program reasons, in a manner different from that a private owner will follow.

By comparing the figures given by the bidders with the studies independently made by the Commission's industrial engineers, an opinion was formed as to an appropriate price for each facility. Operating figures gathered from the buyers also provided the Commission with information useful is making comparisons between similar plants, which was important in the development of a reasonable relationship in the final sales price.

Each bidder was then asked to raise his bid where necessary and it was on this basis that negotiations were concluded. Sales prices exceed initial high bids for these facilities by over $30 million. This can be largely attributed to the procedure followed throughout the negotiating period.

During the course of negotiations, bidders who did not become purchasers raised their initial proposals by approximately $75,218,000. Unquestionably this fact, coupled with the splendid cooperation given by these bidders, aided the Commission materially in achieving the substantial overall increase referred to previously.

We do not presume to say that we hit upon a scientific or exact mathematical formula for determining value which is so accurate as to be conclusive. We were able to form opinions as to appropriate prices for purposes of comparison and negotiation. We had enough confirmation from various bidders to indicate that our method of approach to the question of value was sound for the sale of a going business.

In this manner and in many long negotiating sessions, the Commission and bidders reached a common meeting ground on prices.

The Commission believes that the sales recommended return to the Government full fair value, and it cannot foresee any time or circumstance in the future when the plants will be worth more.

Details of these sales appear in the following sections.

During testimony on this subject, the Commission submitted the following charts which are indicative of the negotiating methods which resulted in the final recommended sales prices. These charts illustrate how the initial bids were gradually raised by negotiation until the offering prices reached the Commission's judgments as to full fair value:

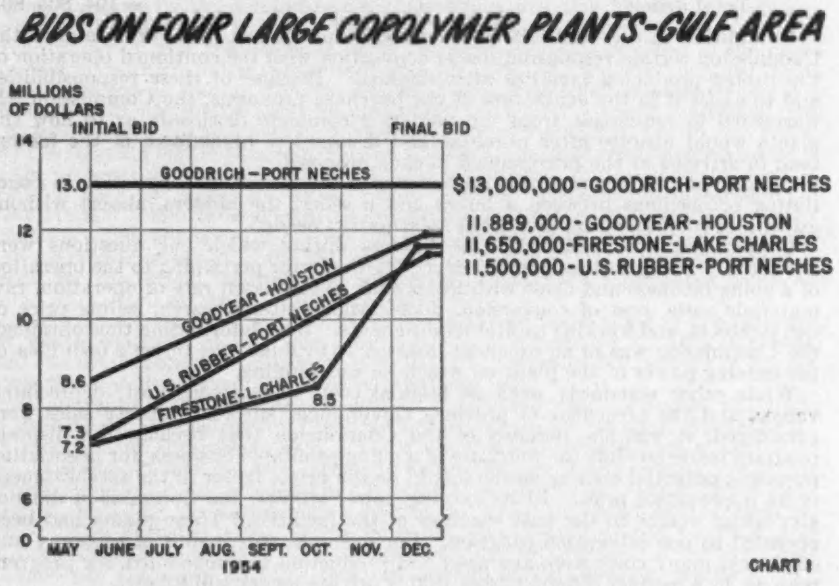

CHART I

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BIDS ON HOUSTON BUTADIENE PLANT

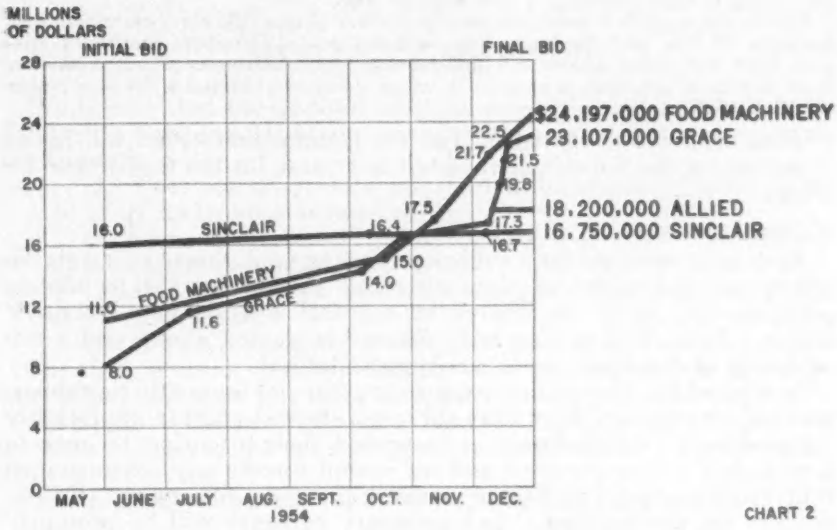

CHART 2

The following excerpt from the Commission's report gives in capsule form the results of their successful efforts to obtain full fair value:

FINANCIAL ASPECTS

The Rubber Producing Facilities Disposal Commission herewith reports to Congress that it has executed contracts of sale for plants and equipment which, supplemented by cash expected to be realized from the sale by Federal Facilities Corporation of the Government-owned inventory of synthetic rubber, will produce for the United States Treasury a total of approximately $310,565,000.

This total is made up of the sum of the following items:

(1) Contract sale prices of 24 plants	$285,465,000
which includes—	
(a) The fixed price for capital assets as of Aug. 31, 1954, of	259,529,000
(b) Additional payments by purchasers for certain raw materials, work in process, spare parts and supplies, plus net additions to fixed assets as specified in contracts of sale which will amount to an estimated	25,936,000
(2) Contract sale price of miscellaneous equipment	300,000
(3) Inventories of synthetic rubber as of transfer date to be sold by Federal Facilities Corporation under sec. 7 (k) of the Disposal Law which it is now estimated would produce at current market prices approximately	24,800,000
Total	310,565,000

Cost before depreciation (gross book value) of items Nos. (1) and (2) above as of transfer date will amount to an estimated $488,584,000 and after depreciation (net book value) $131,954,000.

Federal Facilities Corporation estimates it will have a cash balance for the synthetic rubber program on transfer date of approximately $91 million. This sum will be increased by the cash proceeds of unsold net current assets (other than

inventories of synthetic rubber) including component materials and diminished by expenses of standby for unsold facilities, administrative and other costs.

It is estimated that the total of items Nos. (1), (2), and (3), plus cash on hand, will return to the Government over $401,565,000.

The Government will retain ownership of three plants (the copolymer plants at Institute, W. Va., and Baytown, Tex., and the alcohol butadiene plant at Louisville, Ky.), the Akron laboratory, tank cars, and miscellaneous equipment having, as of November 30, 1954, a gross book value of $64,556,138 and a net book value of $19,190,542.

Your committee is satisfied that the Commission's plan will result in receipt by the Government of full fair value for the facilities to be sold.

National security

Each sales contract for a rubber-producing facility contains a clause which assures that for 10 years after sale the facility will be kept in readiness for use in the interest of national defense upon 180 days' notice. This "national security clause" is quoted above under the summary of the Commission's recommendations.

In view of the current and prospective demand for synthetic rubber, we can see no possibility that these plants will operate appreciably below capacity. Purchasers have stated their intention to operate a synthetic-rubber industry and we cannot foresee any circumstance that would enable profitable ownership to do otherwise. Consequently we are confident that necessary capacity will be promptly available in the event of any emergency which would make the national security clause operative.

Retention of records

The committee feels that the records of the Government's operations and ownership of these rubber-producing facilities should be retained in the public interest. To this end we are requesting the Federal Facilities Corporation to retain these records.

SUMMARY AND CONCLUSION

The Rubber Producing Facilities Disposal Commission has discharged a difficult task with commendable results. The law under which the Commission worked contained general criteria with very little specific guidance. The Commission was vested with great discretion in fashioning a sales program to meet the tests established in general terms by the Congress.

We believe that the major criteria relating to small-business protection, a competitive synthetic rubber industry, full fair value, and the national security have been observed. While there may be room for differing views and judgments with respect to any individual sale or any individual criterion, we believe that, as a whole, the disposal program is sound and complies fully with Public Law 205.

We are strengthened in this view by testimony of the Comptroller General that the individual contracts appear to satisfy pertinent provisions of the statute, that the Commission's procedure complied with the law, and that the report of the Commission was accurately and fairly stated based upon the records reviewed by the Comptroller General.

For these reasons, your committee recommends disapproval of Senate Resolution 76.

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MINORITY REPORT

We believe that the disposal program recommended by the Rubber Producing Facilities Disposal Commission (hereinafter referred to as the Commission)—

(1) Does not adequately assure small businesses of a fair share of synthetic rubber at fair prices;

(2) Does not best foster the development of a free, competitive, synthetic-rubber industry;

(3) Does not return to the Government "full fair value" for the facilities; and

(4) Does not adequately safeguard the national security.

For these reasons we must disagree with the majority of the committee and express a favorable view toward Senate Resolution 76.

We approve the principle that these facilities should be sold, but we cannot approve the sales program recommended by the Commission.

I. FAIR SHARE TO SMALL BUSINESSES AT FAIR PRICES

A review of the Commission's recommendations reveals that control over capacity of the GR–S and butyl rubber plants to be sold would be vested as follows:

Ownership	Capacity	Percentage of capacity
	Long tons	
Big Four rubber companies (Firestone, Goodrich, Goodyear, U. S. Rubber)	444,600	57
Other large users (Armstrong Rubber, Dayton Rubber, Gates Rubber, Mansfield Rubber, Sears, Roebuck & Co., Selberling Rubber, Dunlop Rubber, American Biltrite Rubber, Endicott-Johnson, Goodall Rubber, and others)	93,000	12
Big oil companies (Shell, Phillips, and Standard of New Jersey)	242,000	31
Total	779,600	100

Thus approximately 88 percent of the GR–S and butyl capacity would be in the hands of 4 large rubber companies and 3 large oil companies, all of which either fabricate rubber or provide retail outlets for rubber products. The remainder, or approximately 12 percent of capacity, is in the hands of other relatively large rubber fabricators or users. It is from these sources that small-business men must obtain their supply of synthetic rubber.

The sales contracts seem to provide that certain quantities of output will be made available to these small-business men. We submit that these so-called guaranties are of little or no practical value to the small-business man who fails in his efforts to get a fair share of synthetic rubber, or who fails to get it at fair prices, or both. This is a typical contract provision:

> The purchaser will sell approximately 20 percent of the GR–S rubber produced at the facility to small-business enterprises * * * at the going price on types of rubber generally accepted. In the event demand exceeds such 20 percent, purchaser will consider expansion of its facilities to take care of the added small-business market.

These contract provisions are in the nature of representations and warranties to the Commission. Small businesses are not parties to the contracts. Any remedy for failure to observe the representations and warranties could only result from action brought by the Government and would probably be a mere injunction to restrain similar conduct in the future. Is such a prospect likely to dissuade these big companies from policies detrimental to small business? We think not. Would such a remedy be of any practical value to small business? We think not. By the time the legal battle could result in such a final injunction, the small-business man would be out of business.

Even if small rubber producers can, as a matter of law, sue under these contract provisions, as the purchasers have claimed in answer to House committee questions, the chances of recovery are slight. How the small manufacturer can, in the first place, secure evidence concerning the synthetic producer's production and percentage of sales to small business is difficult to imagine. If the producer who is sued shows that he sold his agreed percentage to other small businesses, there is no violation—and the plaintiff must hunt up another producer company, and another, with lawsuits (or sue them all together), until one with some unsold part of the small business allocation is found. The difficulties of proof and the endless chase after raw materials while litigation runs on are not likely to convince small manufacturers that this disposal plan provides them with a fair share at fair prices.

Furthermore, most of the "small business clauses" are expressed in terms of percentages of output and do not state any specific amount which will be available. Thus, the quantity which may be available to small business is entirely subject to the production schedules of the plant owners.

The contract protections against unfair prices in the sales of synthetic rubber are equally vague and illusory. "Going price," "fair market price," "competitive terms," etc., are not capable of precise judicial definition, and violations are therefore difficult to prove. With only a limited supply of synthetic production available to meet the demands of small users, market conditions as well as parallel price action by producers may push the "going rates" to unfair levels. The inadequacy of litigation to protect the legitimate interests of the small manufacturers under these clauses is again obvious.

Members of the committee have received complaints from small users of synthetic rubber who anticipate the failure of their businesses if sales are consummated under present contract terms. They seriously and honestly believe that the sales and pricing policies of the prospective owners will certainly squeeze out the small businesses in the industry. There is an indication that other small-business men are intimidated to the extent that they are afraid to complain. They fear that if they complain and if the sales are consummated as recommended, those who complained will be treated even more severely.

We believe that the negotiated sales contracts are not "designed best to afford small-business enterprises and users, other than the purchaser of a facility, the opportunity to obtain a fair share of the end products of the facilities sold and at fair prices," as provided in Public Law 205.

We think that the most reasonable and the surest way to protect small users of synthetic rubber is for each sales contract to specify the.

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actual amounts which will be available to small business, and to specify damages to be forfeited in event of failure to observe contract provisions regarding such actual amounts.

II. COMPETITIVE SYNTHETIC RUBBER INDUSTRY

As shown by the table above, the recommended sales program will vest 88 percent of the synthetic rubber capacity in the hands of large rubber and oil companies. These industries have been notorious in their disregard for antitrust laws, or Federal trade laws, or both. The hearings before committees of the Senate and the House are replete with documentation of court cases involving these industries with pleas of guilt or no contest to charges of price fixing, discounts, bonuses, classifications of customers, allocations of sales territories, etc. In short, the public record does not demonstrate a history of competitive actions but rather of concerted actions.

With such a record in the background, we cannot be less than skeptical regarding "competition" which will prevail in the synthetic rubber industry if these sales are consummated. We do not believe that the "recommended sales provide for the development within the United States of a free, competitive, synthetic rubber industry," as provided in Public Law 205.

While the Attorney General has stated that, in his opinion, the proposed disposition is not in violation of the antitrust laws, he has not stated—and indeed we believe he cannot state—that his disposal would "foster the development of a free competitive synthetic rubber industry" (sec. 3 (c) of the Rubber Producing Facilities Disposal Act of 1953).

Perhaps any sales program would result in sales to the purchasers recommended by the Commission. However, without some contract provisions relating to pricing policies, now is not the time to risk a transfer of the synthetic rubber industry to companies whose pricing policies could result in excessive Federal expenditures for rubber during a time of national emergency.

III. FULL FAIR VALUE

The Commission had considerable discretion in determining the full fair value of the facilities to be sold. However, the legislative history reveals that this value should be determined on a sound businesslike basis and with careful attention to the earning power of a thriving industry. We submit that a price of $260 million is not a full fair value for this industry.

Government experience in recent years shows the following figures for profits and depreciation in millions of dollars:

Fiscal year	Profits	Depreciation	Total
1951	$11.9	$33.4	$45.3
1952	16.1	40.6	56.7
1953	59.9	31.4	91.3
1954	42.1	29.7	71.8
1955	[1] 36.0	[1] 23.0	[1] 59.0
Total	166.0	158.1	324.1

[1] Estimates in the 1956 budget.

It should be noted that the figures for 1951 and 1952 cover a period when profitmaking was not a prime consideration, and when unusual expenses were incurred in reopening unprofitable plants and later placing these plants in standby.

On this record, it seems without question that continued Government operation over the next 4 or 5 years would return in profits and capital recovery through depreciation more money than the proposed sales would return in 10 years. And this could be done at current sales prices for synthetic rubber. It could be argued that Federal income taxes will increase the Government's return during these years, but this is more than offset by the fact that the Government would still own the plants.

Under the circumstances, is $260 million a "full fair value" for such a profitable industry? We think not. Furthermore, profit taking is considerably enhanced by the likelihood that private owners will raise synthetic rubber prices. The only ceiling on such prices is the price of natural rubber, which is now about 30 cents per pound—compared with the Government price of 23 cents per pound for synthetic. The closing of this price gap by a rise in the synthetic price is not only feasible but probable. It is not unreasonable to assume that at the present price of 23 cents per pound, profits and depreciation could cover the proposed prices to be paid by purchasers within the first 6 to 8 years of operation, even after Federal income tax is paid. If we assume a price rise of 5 cents per pound, which is not unlikely, the entire purchase price can be recovered in 2 years. Does this appear to be a good deal for the Government and the taxpayers who now own these plants? We think not.

It was hoped that revisions during development of Public Law 205, which revisions lengthened the periods for bidding and negotiation, would result in greater competition among bidders. This objective was not realized. Of the 11 copolymer plants sold, only 1 plant had more than 1 bidder. Of the 9 butadiene plants sold, 4 plants had only 1 bidder and 2 others had only 2 bidders. There was likewise only one bidder for each of the butyl plants and for the DDM plant. Under these conditions of bidding, it would have been most unlikely for the Commission to have achieved full fair value for the plants.

We believe that these plants are worth more than the proposed sales prices, and we cannot agree that these prices represent "full fair value," as contemplated by Public Law 205.

IV. NATIONAL SECURITY

The national security is involved in these sales in two ways. The first consideration is the necessity for an assured productive capacity for synthetic rubber, which capacity must be available promptly. The second consideration is the price which the Government must pay for the product.

We believe that the "national security clause" does not assure the prompt availability of the productive capacity necessary to protect the national security. This clause merely requires that the facilities be placed in condition to produce at the assigned rate of annual capacity within 6 months after notice from the Government. We believe that the possibility of a 6-month delay is detrimental to the

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national security, particularly in view of present conditions in the Far East. In the event of a national emergency, we cannot afford the risk of a 6-month delay in attaining maximum production of synthetic rubber.

In the second place, as we have pointed out, this sales program places control of the synthetic rubber industry in the hands of companies whose past actions show a remarkable affinity in pricing policies. There is good reason to suppose that this affinity is an enduring one and that in a national emergency the Government could expect to pay a price fixed by monopolistic or semimonopolistic conditions.

The primary source of natural rubber is in an area extremely vulnerable to further aggression by powers unfriendly to this country. The international situation in Southeast Asia is demonstrably worse than it was at the time of the passage of the disposal legislation in 1953. The danger of a loss of this source of natural rubber is therefore much greater. And the opportunities are also great for shortages of natural rubber to boost the market prices of available synthetic rubber far above a fair level. We have not forgotten the rapidity with which this area was lost in World War II. Nor have we forgotten the frantic efforts to reclaim rubber from old tires, inner tubes, rubber gloves, hot water bottles, and anything else made of rubber.

In case of emergency it will, of course, be necessary to allocate our scarce rubber supplies to the most essential needs of national defense; to require the use of feedstocks for the production of synthetic rubber; to coordinate the operation of the present rubber-producing facilities; and to prevent any action which would require the Government to pay exorbitant prices for materials produced in these plants created by the Government. Rubber may not be bullets and bombs, but it is an indispensable material for the equipment which delivers those vital elements in our defense.

This is not the time to vest control of the only source of domesitcally produced rubber in the hands of companies known sometimes to have little regard for the public interest, without further contract provisions protecting the Nation against inadequate supplies, exorbitant prices, and uncoordinated operation. The possibility of some fair recapture provisions in case of dire need should also be reviewed.

For these reasons we do not believe that the recommendations for the disposal of the facilities is consistent with the national security, as required by Public Law 205.

CONCLUSION

We believe that it is the duty of the Senate, in the public interest, to disapprove the sales program recommended by the Rubber Producing Facilities Disposal Commission. Based upon the knowledge and experience we have gained under Public Law 205, we believe that certain changes in the law as well as public knowledge of congressional intent can result in a sales program which will more adequately protect the public interest by—

(1) Assuring small businesses a fair share of synthetic rubber production at fair prices;

(2) Fostering development of a free, competitive, synthetic rubber industry;
(3) Returning full fair value for the facilities; and
(4) Promoting the national security.

There is no justification for disposing of these valuable and highly profitable plants on any other basis.

J. W. FULBRIGHT.
JOHN SPARKMAN.
PAUL H. DOUGLAS.
HERBERT H. LEHMAN.
WAYNE MORSE.

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Calendar No. 118
Calendar No. 119

84TH CONGRESS, 1st Session } SENATE { REPORT No. 118

ADVERSE REPORT ON RESOLUTIONS DISAPPROVING THE PROPOSED SALE TO SHELL CHEMICAL CORP. OF CERTAIN GOVERNMENT-OWNED RUBBER-PRODUCING FACILITIES IN CALIFORNIA

MARCH 22 (legislative day, MARCH 10), 1955.—Ordered to be printed with illustration

Mr. FREAR, from the Committee on Banking and Currency, submitted the following

ADVERSE REPORT

together with

MINORITY VIEWS

[To accompany S. Res. 78 and S. Res. 79]

The Committee on Banking and Currency to whom was referred the resolutions (S. Res. 78 and S. Res. 79) disapproving the sale of certain rubber-producing facilities in California, having considered the same, report adversely thereon and recommend that the resolutions do not pass.

GENERAL STATEMENT

Public Law 205, 83d Congress, approved August 7, 1953, authorized the sale of 27 Government-owned synthetic rubber plants and other related facilities and reserved to the Congress the power to reject any or all of such sales by vote of either the Senate or the House of Representatives.

The three California plants, Plancors 611, 929, and 963, produce synthetic rubber, styrene, and butadiene respectively. Only Plancor 611 produces copolymer, which is synthetic rubber (GR–S), the others producing feedstocks used in the manufacture of synthetic rubber. These plants are located adjacent to one another. While separated facilities in the technical sense, they are interconnected by a system of pipes sending products back and forth between the plants and are economically a single integrated operation.

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The Rubber Producing Facilities Disposal Commission proposes to sell these plants to Shell Chemical Corp. for $30 million.

Midland Rubber Co., its parent corporation Minnesota Mining & Manufacturing Co., and Edwin W. Pauley, an individual, bid $2,500,000 for the copolymer plant, Plancor 611. This bid was later raised to $3 million. This group, here referred to as Minnesota, opposes the sale to Shell on the technical gound that its bid did not comply with the statute because Shell did not state a separate price for each of the three facilities.

Public Law 205, 83d Congress, provided a general plan for the disposal of Government-owned rubber-producing facilities. Its broad objectives were given in this statement from your committee's report approving the bill (S. 2047), which had been referred to this committee.

> First, the Government must realize the full fair value of the facilities; second, disposal must be effected in such a way as to insure to the consuming public and to the small and large fabricators alike the benefits of fair competition; and finally, to insure against the hazards of unforeseeable contingencies the facilities must be sold on such terms as will guarantee their ready availability for the production of synthetic rubber in time of emergency. Disposal pursuant to these criteria will best serve the public interest.

The Rubber Disposal Commission, both in its written report and in testimony before this committee, recommends the sale of these plants to Shell as the most likely way to safeguard effective competition in the production of synthetic rubber on the west coast. The Attorney General has advised us that the proposed sale of these plants to Shell will best foster the development of a free competitive synthetic rubber industry.

The proposed sale to Shell meets the Commission's ideas of full fair value for the facilities concerned.

The Minnesota bid on the copolymer plant did not meet its full fair value target. Neither did the Pauley bid on the butadiene plant. The Commission's proposed contract of sale contains appropriate national security safeguards, as in the case of the other sales contracts. Thus the Shell proposal meets the purposes Congress had in mind in passing the act and for which it reserved a right of review. We turn now to the technical objection to the Shell bid.

Shell bid $27 million for the 3 facilities and advised the Commission that it was not interested in buying less than the 3 facilities. The Commission fixed its own full fair-value target and negotiated with each prospective purchaser against its own target value. It did not inform any bidder of the amount of other proposals. The Commission's idea of full fair value for these 3 plants was $30 million and in negotiation between the Commission and Shell the Shell offer was raised to that amount. This sum is higher than any other package offer for the 3 plants. It is also higher than any combination of the highest offers the Commission received for each of the plants.

Minnesota bid $2,500,000 for the copolymer plant. Mr. Pauley alone bid $4 million for the butadiene plant. They did not bid for the styrene plant. In negotiation the Commission told Minnesota that its full fair target value for the copolymer plant was $3,500,000. Minnesota raised its bid to $3 million but was unwilling to offer $3,500,000. Minnesota was therefore not willing to pay the full fair value contemplated by the act. Mr. Pauley's highest bid for the butadiene plant was $4 million against a Commission full fair value target of $7 million.

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Standard Oil Co. of California bid $3,500,000 for the copolymer plant and later raised that offer to $5 million. That company also bid $5 million for the butadiene plant. Thus Minnesota was not the high bidder on the copolymer plant and Mr. Pauley was not the high bidder on the butadiene plant even on an individual plant basis.

The west coast plants have a capacity 5 or 6 times as great as the volume that can be marketed in that area without making sales to the 4 large rubber companies who are themselves purchasers of gulf coast rubber-producing facilities. Minnesota and Standard conditioned their bids for the copolymer plants to obtaining sales contracts with the large rubber companies to an extent that the Commission did not believe it could ever reach a contract with either Standard or Minnesota. The Shell bid was unconditional (other than that it would only purchase the three facilities).

The act requires that a proposal to purchase these facilities shall state the amount proposed to be paid for "each of these facilities." The Rubber Disposal Commission's instructions to bidders made this reference to package bids:

> Where a proposal contemplates acquisition of several facilities for integrated operation, it shall state separately the aggregate amount proposed to be paid for such facilities on an integrated basis, and the amount otherwise proposed to be paid for each of the facilities in question on an individual basis.

The Shell bid, originally $27 million and later raised to $30 million, states that:

> We do not state the amounts we propose to pay for any of the facilities on an individual basis as we do not propose to purchase individual facilities;

Minnesota argues that Shell's proposal cannot be considered because it did not state separately the amount to be paid for each facility. In reply it is argued that the Shell bid in effect says that it will pay zero for each facility separately and $30 million for the 3 as a package. It is argued that for Shell to have placed separate values on each of the facilities would have been misleading because it did not propose to purchase them separately. Certainly it would have had little meaning because what was called for was not the bidder's estimate of value but the amount it proposed to pay.

Two legal opinions have been presented to your committee as to the technical validity of the Shell proposal. One is the opinion of the Rubber Producing Facilities Disposal Commission. The other is by the Comptroller General at the request of the chairman of this committee. Both legal opinions without reservation approved the legal adequacy of the Shell proposal.

The Comptroller General's opinion, dated March 8, 1955, reaches the conclusion that the Shell proposal must be interpreted as offering to pay zero for each facility separately and complies with the statute, and that the proposal requirements were directory and not mandatory. The pertinent parts of that opinion are:

> "It is recognized that the Commission's position involves treating the requirement as meaning that there need be shown only the amount proposed to be paid on the basis of the smallest unit intended to be purchased, as distinguished from 'each of the facilities' included in such unit. In this view, the statutory direction would be complied with because there would be no offer to purchase an individual facility as such. In other words, the amount bid for each facility would be zero. Apparently, the only other view possible is that proposals for combined facilities must show prices for individual units even though it not be intended to buy them. Such a view, however, not only would be illogical, but it might well involve mis-

representation on the part of a bidder. In any event, it is not apparent how individual amounts could be quoted in such circumstances or, if quoted, what practical use could be made of them. Also, there is for consideration the fact that basic proposals were requested, not to become final contracts, but merely to establish a basis for further negotiations.

There would appear to be no logical objection to recognition of bidders in this category for purposes of negotiating because, while they are not in competition for separate facilities as such, their bids readily could be compared with aggregate bids for the separate facilities involved, and the Government's advantage easily could be determined, whether at the outset or after subsequent negotiations. Clearly, also, the fact that proposals were not final—serving merely the purpose of establishing a floor for negotiation of final contracts—precluded any undue advantage over a competing bidder interested in a single facility. Finally, since the statute must be construed as a whole, each provision being given a meaning harmonious with all other provisions, it appears clear that the overall design and purpose was to bring all qualified bidders into the competition. Consequently, the requirement of subsection 7 (b) (4) should not be given a technical meaning which would restrict eligibility so as to exclude qualified purchasers interested only in integral groups of facilities, but a meaning, such as that adopted by the Commission, more consistent with the whole objective of the law.

The Commission's opinion to this committee as to the propriety of the Shell proposal says:

Minnesota was made fully aware, as were other bidders on the west coast plants, that the disposal of these plants presented one of the most difficult problems confronting the Commission. A principal concern to bidders on the copolymer plant was the absence of an assured market for its production. Standard of California made the assurance of such a market an absolute condition of its offer to purchase, and Minnesota suggested that to meet this problem the Commission should obtain an agreement from purchasers of other Government-owned rubber-producing facilities that they would, for a minimum of 5 years from the effective date of sale, purchase their west coast GR–S requirements from the Los Angeles copolymer plant at current market prices. This suggestion could not be complied with by the Commission. The question of finding markets was left entirely to the bidders. The Shell proposal was the only one which freely accepted this burden. Shell was willing to take its chances on finding and developing markets. This factor, therefore, loomed increasingly important in the Commission's thinking as the program progressed.

As to the legal sufficiency of the Shell bid the Commission's opinion says:

Shell was declared eligible to negotiate for the purchase of the plants upon the basis of its proposal which was found to have met the requirements of the act and the Commission's instructions. Minnesota asserts that the failure to break down the bid into individual prices for the individual plants comprising the package is fatal.

The Commission cannot subscribe to this view. Section 7 (b) (4) of the Disposal Act provides that proposals shall contain the amount proposed to be paid for each of the facilities, and, if such amount is not to be paid in cash, then the principal terms of the financing arrangement proposed. Broadly speaking, this section, procedural in nature, is designed to inform the Commission as to how much a bidder proposes to pay and how he proposes to pay it.

We are fully satisfied that the Shell bid meets the requirements of the statute. We are also satisfied that it meets the congressional purposes intended in the Rubber Disposal Act.

The technical nature of the legal objection to the Shell proposal is pointed up by this fact. Had Shell broken its initial proposal of $27 million down into a representation that, if it were willing to buy the 3 plants separately, it would pay $18 million for the styrene plant, $4 million for the butadiene plant, and $4 million for the copolymer plant, but would pay $1 million more than the aggregate of its separate bids if it were awarded all 3 plants. The whole basis of the complaint against the Shell proposal on legal grounds would have disintegrated.

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Moreover, it is conceded that Shell could still have expressed a preference not to buy any of the three plants singly.

No other bidder on any of the three plants would have known what price Shell ascribed to the individual plants anyway, before the contract of sale was entered into, since the Disposal Commission did not choose to disclose to bidders prices offered by others submitting proposals.

Nor was Minnesota in any way injured by the form of the actual Shell proposal. At no time did Minnesota or Mr. Pauley indicate a willingness to meet the Commission's ideas of fair full value. The statute required it to bid the fair full value of the property. They were not the high bidders. Standard's bid on the two individual plants was substantially higher. Finally, no bidder was told the amount of any other bid, the Commission negotiating with each against its own ideas of fair full values; and Minnesota and Mr. Pauley never did meet the Commission's fair full value targets on these two plants. On the other hand, the Government would be prejudiced if it were required to sell these properties for less than the highest proposal, if this proposal met the other criteria of the Disposal Act.

The Senate does not now have this question in a judicial capacity. We are not required to apply rules of law to measure strictly the legal sufficiency of Shell's proposal, although the two Government legal opinions on the question noted above reach the conclusion that the Shell proposal was legally sufficient. We decide this question in a legislative capacity. We are to determine whether the Congressional objectives of the Rubber Disposal Act have been accomplished. The record compels the conclusion that the Shell proposal was proper and that the proposed sale to Shell meets the objectives of the act. Accordingly, we should not support the sale of these properties at a price below that offered by a bidder who met the national security, competitive rubber industry necessities, and full fair value factors upon which the statute was based.

CONCLUSION

For the foregoing reasons, your committee urges that neither of these resolutions be approved, but that the proposed sale of the three plants mentioned in the resolution be allowed to be made to the Shell Chemical Corp., as recommended by the Disposal Commission.

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MINORITY REPORT

PURPOSE OF RESOLUTIONS

The purpose of both of these resolutions (S. Res. 78 and S. Res. 79) is to disapprove the proposed sale by the Federal Government to Shell Chemical Corp. of three rubber-producing facilities in California. The three facilities are (1) Plancor 611, a plant for the production of general-purpose synthetic rubber (GR–S), located at Los Angeles, Calif.; (2) Plancor 963, a plant for the production of butadiene, located at Torrance, Calif.; and (3) Plancor 929, a plant for the production of styrene, located at Los Angeles, Calif.

Enactment of 1 of these resolutions is a necessary preliminary step to the later enactment of legislation providing that these 3 plants may again be offered for sale by the Government.

GENERAL STATEMENT

These 3 plants were included among 27 offered for sale by the Rubber Producing Facilities Disposal Commission pursuant to the provisions of the Rubber Producing Facilities Disposal Act of 1953 (Public Law 205, 83d Cong., approved Aug. 7, 1954). Proposals to purchase were received as follows:

Plancor 611 (copolymer):

1. The Dow Chemical Co.
2. Minnesota Mining & Manufacturing Co., Midland Rubber Corp., and Edwin W. Pauley.
3. National Lead Co.
4. Shell Chemical Corp.
5. Standard Oil Co. of California.

Plancor 963 (butadiene):

1. The Dow Chemical Co.
2. Edwin W. Pauley.
3. Shell Chemical Corp.
4. Standard Oil Co. of California.

Plancor 929 (styrene):

1. American Chemical Corp.
2. The Dow Chemical Co.
3. Foster Grant Co., Inc.
4. W. R. Grace & Co.
5. Heyden Chemical Corp.
6. Hercules Powder Co., Inc.
7. Monsanto Chemical Co.
8. Montrose Chemical Co.
9. National Lead Co.
10. Shell Chemical Corp.
11. Standard Oil of California.

Several of these proposals were for the purchase of 2 or 3 of these plants as a package deal. These were submitted by the Dow Chemical Co. (3 plants), National Lead Co. (2 plants, GR–S and styrene), and Shell Chemical Corp (3 plants). Another package bid was received from Standard Oil of California for these three plants plus a butadiene plant at El Segundo, Calif. (Plancor 1593).

Consequently, the Disposal Commission was not confronted with a lack of prospective purchasers for these 3 plants, either separately or in combination of 2 or 3 plants.

For convenience of reference, there are set forth at this point three charts presented by the Disposal Commission during its testimony before your committee's Subcommittee on Production and Stabilization on March 9, 1955:

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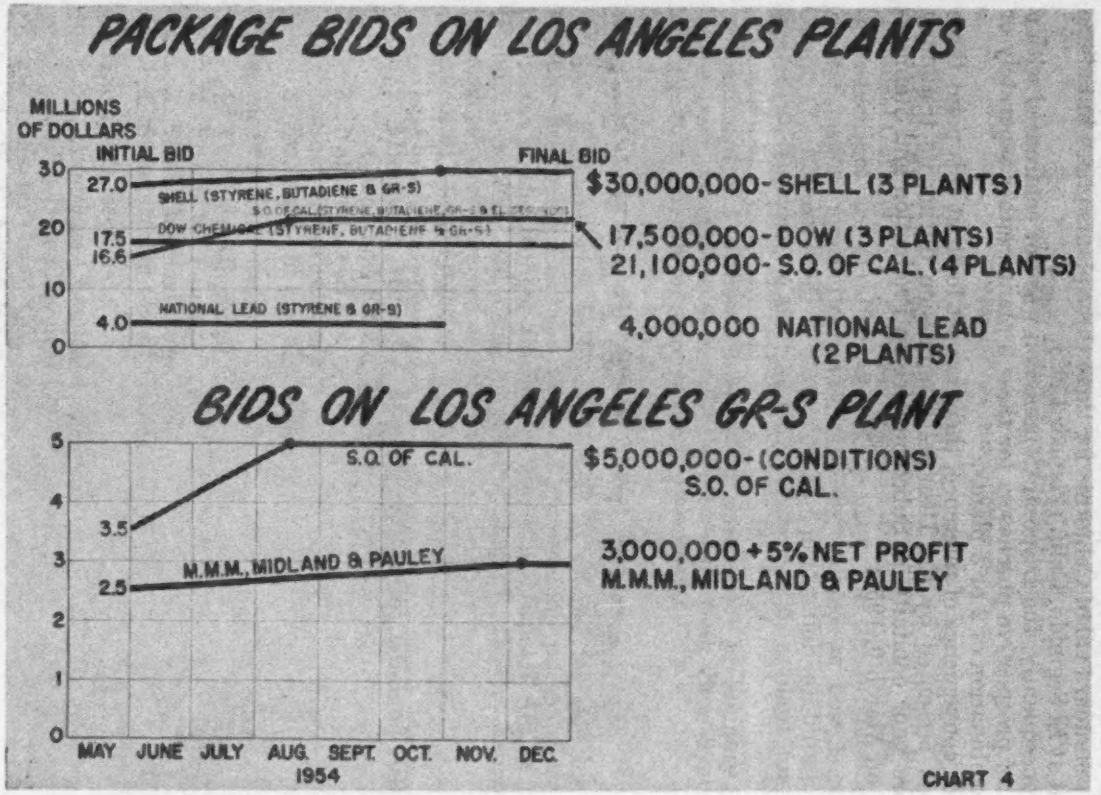

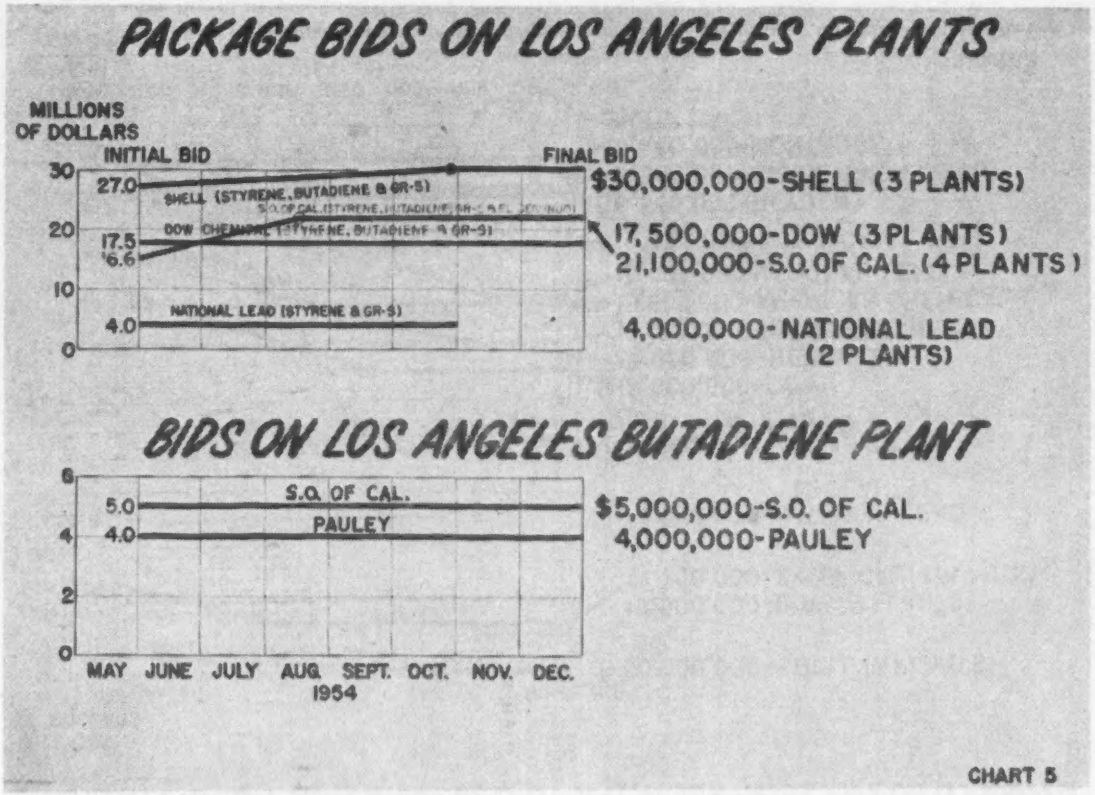
PACKAGE BIDS ON LOS ANGELES PLANTS
MILLIONS OF DOLLARS
INITIAL BID
FINAL BID
30
20
10
0
27.0
17.5
16.6
4.0
SHELL (STYRENE, BUTADIENE & GR-S)
DOW CHEMICAL (STYRENE, BUTADIENE & GR-S)
NATIONAL LEAD (STYRENE & GR-S)
$30,000,000-SHELL (3 PLANTS)
17,500,000-DOW (3 PLANTS)
21,100,000-S.O. OF CAL. (4 PLANTS)
4,000,000-NATIONAL LEAD (2 PLANTS)
BIDS ON LOS ANGELES BUTADIENE PLANT
6
4
2
0
5.0
4.0
S.O. OF CAL.
PAULEY
$5,000,000-S.O. OF CAL.
4,000,000-PAULEY
MAY JUNE JULY AUG. SEPT. OCT. NOV. DEC.
1954
CHART 5

60300—55——2

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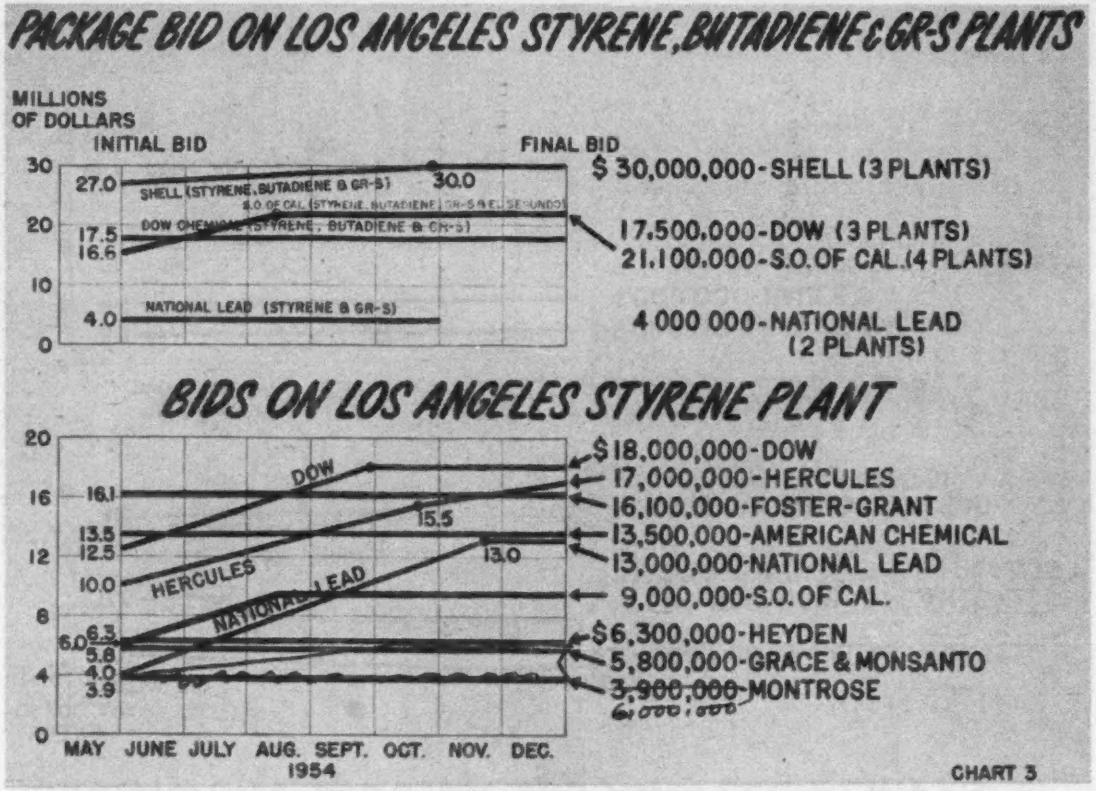

NOTE.—The proposal of the Montrose Chemical Co. is erroneously recorded on the above chart. On October 8, 1954, Montrose increased its bid to approximately $6 million.

REQUIREMENTS FOR SUBMITTING PROPOSALS

A most forceful argument for setting aside the proposed sale to the Shell Chemical Corp. (hereinafter referred to as "Shell") is that the requirements of the Disposal Act were not observed in the proposal submitted by Shell to the Disposal Commission.

Section 7 (b) of the Disposal Act plainly states:

> Proposals *shall* be in writing, and *shall* contain, among other things * * * (4) the amount proposed to be paid for *each* of the facilities, * * *.

The proposal submitted by Shell failed to observe this requirement. Shell's initial proposal was to purchase the 3 plants for $27 million. Negotiation raised this to $30 million, for which the Disposal Commission proposes to sell all 3 of these plants to Shell. The proposal made no attempt to conform to the statutory requirement that the proposal specify the amount proposed to be paid for each of the facilities. In its proposal Shell stated:

> We do not state the amounts we propose to pay for any of the facilities on an individual basis as we do not propose to purchase individual facilities.

The Disposal Commission and Shell both testified that the Commission requested Shell to break down its proposed purchase price so that a portion thereof would be identified with each of the three plants. Shell declined to do so. In other words, Shell did not choose to abide by the statutory requirements quoted above.

Its failure to do so made it extremely difficult, if not impossible, for the Disposal Commission to know which of the several organizations submitting proposals on the three plants actually submitted the highest proposal on each. This tends to defeat one of the purposes of the Disposal Act. One of the main criteria set out in the act to guide the Disposal Commission in its plans for recommending disposal is the requirement that full fair price be paid for the facilities. Shell's failure to break down its bid into an amount for each facility placed the Disposal Commission in the difficult position of trying to determine whether the Shell proposal—lump sum in nature—actually exceeded the highest price named in the proposals for the individual plants.

Section 16 of the Disposal Act requires the Commission to use "as the basis for negotiating the sale of each facility the highest amount proposed to be paid for each facility," if this constituted a bona fide proposal and was submitted by someone competent to operate a rubber-producing facility. In view of the incomplete form of the Shell proposal, the Commission had no way of knowing whether it was complying with this provision of the law or not.

In addition, the Commission noted on page 3 of its report to the Congress that it made a timely announcement that it would negotiate first with the highest bidder. The Commission itself expressed the belief that this action caused the initial proposals to be higher than they otherwise would have been. Again, because Shell failed to break down its proposal into amounts attributable to each plant, it is not possible to determine whether the Commission abided by its own recommendations in this respect.

It appears from the record that on June 10 and 11, 1954, the Commission notified Shell and Foster Grant Co., Inc., that it was ready to begin negotiations for sale of the plants on which they had bid. In

the opinion of the Commission, Foster Grant Co., Inc., had submitted the highest proposal for the styrene plant (plancor 929). The principals of this company were in Mexico at the time. Consequently, the Commission actually began negotiations with Shell on June 14. The Commission's records show that this was the first negotiation for sale of any of the three plants. Subsequently, negotiations were held as follows: June 22, Foster Grant Co., Inc.; June 29, American Chemical Corp.; June 30, the Dow Chemical Co.; July 1, Hercules Powder Co., Heyden Chemical Corp., and Monsanto Chemical Co.; July 7, Minnesota Mining & Manufacturing Co., Midland Rubber Corp., and Edwin W. Pauley on their joint bid, Montrose Chemical Co., and Standard Oil of California; July 8, Edwin W. Pauley individually. Eventually the Commission negotiated with all who had submitted bids for any 1 or more of the 3 plants ultimately recommended for sale to Shell.

As noted above, however, negotiations began with Shell. Under its own recommendations, therefore, the Commission must have assumed that Shell submitted the highest proposal on each of the three plants. It is seriously questionable whether the Commission was warranted in making that assumption in view of the refusal of Shell to break down its lump-sum bid. Under its release No. 3, dated April 15, 1954, the Commission stated as follows:

> While the Commission intends to afford prospective purchasers ample time for negotiation, the Commission now gives notice that it may at any time after May 27, 1954, exercise its right to accept that proposal which represents, in the Commission's judgment, the highest monetary return to the Government with respect to each facility consistent with all requirements of the act, and thereafter to proceed with the preparation of contracts of sale.

Consequently, the Commission's action in beginning negotiations with Shell carried with it the risk to the others submitting proposals for any of the three plants ultimately awarded to Shell that the Commission and Shell might come to acceptable terms and enter into a contract of sale without affording the others submitting proposals the opportunity to negotiate for purchase of any one or more of the three plants. The fact that the Commission finally negotiated with these other organizations submitting proposals did not completely remove the possibility that the latter might be frozen out of negotiations by a quick acceptance of the Shell offer by the Commission.

Section 9 (a) (3) of the Disposal Act also required that the Commission include in its report to the Congress a statement of the reasons why a particular sale is proposed, in the event that there may have been a financially more advantageous proposal for any rubber-producing facility than the sale recommended. On this point the Commission on page 31 of its report to the Congress stated: "Without exception, the Commission sold to the highest bidder." At the same place the Commission further stated that the sale to Shell of the three facilities in California constituted a package sale. It noted:

> The bidder declined to bid for the facilities individually. Shell's bid for the 3 facilities exceeded the total of the highest bids for each of the 3 individual facilities.

With all deference to the Commission's judgment in this instance, it is difficult to determine how the Commission could reach the conclusion that Shell's bid represented the highest bid on each of the three facilities in view of the fact that Shell refused to break down its proposal to a plant-by-plant basis.

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In this very connection it must be noted that the mathematical rule that the whole is equal to the sum of its parts does not apply to this particular transaction. Due to the advantage of owning an integrated facility, it may well be that the price offered for the 3 facilities on a package basis would exceed the sum of the price offered for the 3 facilities on a plant-by-plant basis. Evidence to this effect is found in the proposal submitted for these 3 plants by Standard Oil of California. The total aggregate of the amount which Standard proposed to pay for each of the 3 facilities plus another butadiene plant (plancor 1593) separately was $16 million. In the same proposal, however, Standard submitted a package bid for all 4 plants in an aggregate amount of $16,600,000. Thus its lump-sum bid was $600,000 in excess of the total it bid for each of the 4 facilities separately.

As another example, Phillips Petroleum Co. submitted proposals for the purchase of two facilities, consisting of the copolymer plant at Borger, Tex. (Plancor 982), and a butadiene plant at the same place (Plancor 484). In its proposals Phillips noted that if its proposal to purchase both plants was not accepted then it wished to purchase the butadiene plant alone. It expressed a third preference for the purchase of the copolymer plant alone. For both plants Phillips offered to pay $20,021,000. For the butadiene plant alone, Phillips offered $17,018,000. For the copolymer plant alone, Phillips offered $2,002,000. The sum of its separate bids for the 2 plants amounted to $19,020,000. Thus it is apparent that for both plants Phillips was willing to pay $1,001,000 more than it was willing to pay for the two plants separately.

Therefore, even though the lump sum offered for a combination of plants may be higher in the aggregate than any combination of prices offered for the individual plants, allocation of the lump-sum bid among the plants might well reveal that bids for 1 or 2 of the plants were lower than those submitted by other bidders. If this proves to be true, the disadvantage to the Government becomes obvious. Unless the Commission at the outset of negotiations knows the exact dollar difference among all the bids for each facility, it cannot successfully appraise the need for attempting to drive the lump-sum bidder up with reference to a particular plant or the need to try to drive other bids up on that facility. It is entirely conceivable that a package bidder whose proposal is higher than any combination of individual bids might successfully be negotiated upward even more if its bid is shown to be lower than that received by others on a breakdown of the lump-sum bid among individual plants. Similarly, if a package bidder should prove to be unsuccessful in obtaining all the plants it sought, by having the package bid broken down, the Commission might well be able to negotiate a higher price for each facility with those submitting proposals on individual plants.

Unallocated lump-sum proposals seem inconsistent with section 16 of the Disposal Act in another respect. Under that section the Commission is entitled to negotiate for sale of a particular facility only with a person who had submitted a proposal on that or a facility of a similar nature. In other words, the Commission could negotiate for the sale of a copolymer plant only with those who had submitted proposals on a copolymer plant. Under the unallocated lump-sum theory, a bidder at no cost to himself, or relatively little cost, could have become

eligible for negotiating with the Commission for purchase of all facilities by merely submitting an unallocated lump-sum proposal including each type of facility. This would in effect constitute an evasion of the intent of the Congress that the Commission negotiate for the sale of these plants only with those who had submitted a bona fide bid on the particular type of plant with respect to which negotiations are being conducted.

Moreover, the Commission's own instructions and information in connection with the sale of the facilities expressly provided in section 4:

> Proposals shall state the amount proposed to be paid for each of the facilities. Where a proposal contemplates acquisition of several facilities for integrated operation, it shall state separately the aggregate amount proposed to be paid for such facilities on such an integrated basis, and the amount otherwise proposed to be paid for each of the facilities in question on an individual basis * * *.

By this instruction the Commission did not condone unallocated lump-sum bids. However, Shell refused to break down its lump-sum proposal among the three facilities involved. With the exception of Shell, every successful bidder who proposed to purchase more than one facility specified an amount for each facility separately. Shell's failure to do so may well have had the adverse effect of squeezing out bidders on individual plants because the total amount of the unallocated lump-sum proposal would overshadow the amount offered for any individual plant and would make it difficult to compare the amount offered for an individual plant with the unspecified amount for that plant contained in the lump-sum bid.

The Commission's difficulty in determining whether it had complied with all the foregoing requirements of the statute and its own regulations arose because it failed to follow through on its request that Shell break down its bid in order to determine what Shell would have paid for each of the three facilities if it were willing to purchase them separately. This would have afforded the Commission a means of comparing Shell's lump-sum proposal with the amount proposed to be paid for each of the facilities by others submitting proposals with respect to them. This was not a mathematically impossible requirement. As just noted, Standard Oil of California managed to do this on the 4 facilities in which it was interested, including the very 3 now in question. It is not maintained that Shell would have been required to purchase any of the 3 facilities had it so broken down its proposal, but this process would have then placed the Shell proposal on a parity with those submitted by all other successful bidders for the 24 plants recommended for sale by the Commission. It would have enabled the Commission to determine definitely whether the Shell bid constituted the highest price offered for each of the three facilities. In short, it would have constituted that compliance with the statute which was expected of all who submitted proposals under the Disposal Act.

In the public interest the Commission might then have been in a position to encourage an increase of the amount bid by others submitting proposals on any of the three plants. The amount ultimately proposed to be paid could then have been compared on a like basis with the amount proposed to be paid by Shell. It is not too unreasonable to suppose that this process might well have enabled the Commission to obtain an increase in the bid ultimately submitted by Shell.

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SHALL MEANS SHALL

In order to sustain the validity of the Shell proposal, it is necessary to reach the strained conclusion that as used in section 7 (b) of the Disposal Act, the word "shall" does not mean "shall," but rather means "may."

This conclusion becomes even more strained in the light of the following legislative history in reference to this particular section of the Disposal Act. As introduced in the Senate by Mr. Capehart, the bill which became the Disposal Act (S. 2047) contained a proposed section 9 (c) (3) as an amendment to the Rubber Act of 1948 which provided:

> proposals shall be in writing; and shall contain—(D) the amount proposed to be paid for each of the facilities * * * (F) such other information as the disposal agency *may* reasonably require. [Italics added.]

It should be noted with some significance that this italicized word in the course of legislative history was changed from "may" to "shall" and so appears in section 7 (b) (6) of the Disposal Act. This seems ample evidence to indicate that the Congress with respect to this very point appreciated the difference in meaning between "may" and "shall" and chose to substitute the latter word for the former.

If further proof is needed on this point, it should be noted that section 7 (c) of the Disposal Act expressly provides that the Commission *may* disclose the contents of proposals under certain conditions.

By comparison, S. 2047, as introduced, contained like language in its proposed section 9 (c) (4) of the Rubber Act of 1948. S. 2047 provided that "The Disposal Agent *may* * * *" disclose the contents of proposals under certain circumstances.

The foregoing seems to indicate conclusively that the Congress drew a definite distinction between the words "may" and "shall" and exercised its prerogative to change the word "may" to "shall" in the law when it meant the connotation to be mandatory.

Moreover, if "shall" means "may" as used in section 7 (b) of the Disposal Act, then the entire language of that subsection dealing with proposals must be construed to be merely directory rather than mandatory; yet this provision contains important requirements concerning the ground rules for submitting proposals to purchase the rubber-producing facilities being offered for sale. If it is not mandatory that the proposal specify the amount to be paid for each of the facilities, then it is not mandatory that the proposals even be in writing or that they contain any of the other provisions required by section 7 (b). Under this supposition, anyone wishing to submit a proposal could telephone the Commission without identifying the person in whose behalf the proposal is submitted, ignoring the arrangements and plans being made for feedstock supply and disposal of the end products of the plants, also ignoring the requirement that the prospective purchaser indicate the amount of general purpose synthetic rubber he would be willing to make available for small business, and further ignoring the requirement that he submit to the national security clause in any such sale or set forth the interest rate he is willing to pay on any purchase money mortgage involved in the transaction. In short, under this interpretation, proposals could be submitted to the Commission which would leave it in the dark concerning many of the items determined by the Congress to be essential for a sensible disposal of

the ownership of the rubber-producing facilities. If the Congress meant to achieve this result, it would have been a simple matter to state that proposals *may* be in writing and *may* contain the various items set forth in section 7 (b) of the Disposal Act. The Congress did not choose to do so. The language is not ambiguous. There is no need to go behind the express language of the statute in order to determine congressional intent on this point. Shell failed to follow the plain requirements of the statute and, therefore, its proposal should not have been considered by the Commission until and unless it was brought into line with the requirements of the statute before the termination of the period for submitting proposals to the Disposal Commission.

If, however, we go behind the language of the statute and seek out the legislative history, it still remains apparent that "shall" means "shall." In the Senate, Senator Capehart was the author of the bill which became the Disposal Act of 1953. In the course of leading the bill through debate on the floor of the Senate, as chairman of the committee in charge of the bill, Senator Capehart was asked the following question by Senator Johnson of Colorado:

> I wish to ask whether all the plants, other than the three alcohol butadiene plants, will be sold in a single package, or whether they will be sold plant by plant on bids on a plant-by-plant basis?

Senator Capehart answered:

> They will be sold on the basis of plant-by-plant proposals; and the sales will be made plant by plant (99 Congressional Record 9380 (1953)).

Here then is a clear statement that the plants are to be sold on the basis of a plant-by-plant proposals. In other words, the proposals must be on a plant-by-plant basis whether or not the Commission in its discretion ultimately decides to sell more than one plant to the same owner.

Three equals three—not one

During the course of testimony on this matter before your committee's Subcommittee on Production and Stabilization, some question was raised as to whether the butadiene, the styrene, and the copolymer plants constitute 3 plants or 1 plant. Reference was made to a "complex" in an effort to argue that these 3 plants are in reality 1 plant. The evidence, however, seems overwhelming that they in practice and in law constitute three separate plants. They are now operated for Government account by three separate organizations. They were considered by the Disposal Commission to constitute 3 separate plants as indicated in its notice for advertisement for sale of 27 rubber-producing facilities. As further evidence on this point, the Commission issued 3 separate brochures for these 3 plants. Moreover, it received proposals for purchase of the three plants separately and negotiated on that basis with those submitting such proposals. In addition, no challenge has been made that it would have been unlawful for the Commission, in the exercise of its discretion under the Disposal Act, to award these 3 plants to 3 separate owners or that they are incapable of being operated separately. In all sincerity, it is believed that no further argument is required to sustain the supposition that these 3 plants are 3 plants and not 1 plant.

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POLICY CONSIDERATIONS

Wholly apart from any conclusion which may be reached on the validity or invalidity of the proposal made by Shell, there are sound policy arguments for setting aside the tentative award of these three plants to Shell.

The suddenness with which this country was cut off from its sources of natural rubber supply at the outset of World War II emphasizes the need for a synthetic rubber industry in this country. The very industry we are considering in this legislation formed an indispensable element in the chain of victory ultimately forged by the United States in World War II. Its importance to this country in time of war cannot be overemphasized. This fact itself constituted a strong argument against the transfer of the industry to private enterprise for several years following the conclusion of World War II. Finally in 1953, the Congress declared in the Disposal Act that disposal of the Government-owned rubber-producing facilities pursuant to the provisions of the act would be consistent with the national security. Among the provisions of that act are found requirements that any plan of disposal recommended by the Commission be submitted to the Congress for its consideration. The act permits either House of the Congress to reject the recommended plan of disposal in whole or in part without assigning any specific reason for such rejection. However, as shown in this minority report, ample reason exists for such rejection in the case of the three plants tentatively awarded to Shell.

Monopoly

One of the major criteria set forth in the Disposal Act was the requirement that disposal be accomplished in such a manner as to create a free, competitive synthetic rubber industry. Careful thought should be given as to whether this is best accomplished by allowing the entire control of integrated rubber-producing facilities on the west coast to rest in a single organization. Shell has close connections with two of the Big Four rubber companies. In its replies in answer to questions propounded by Senator Morse, Shell noted that approximately 9,900 service stations purchase petroleum products from Shell Oil Co., the parent of Shell Chemical Corp., and resell Shell gasoline. Shell noted that, in addition, approximately 12,800 service stations purchase products from Shell Oil jobbers and resell Shell gas. It further noted that as of the end of November 1954, 7,400 of these stations sold Firestone tires and 8,000 sold Goodyear tires. Because some stations sell both brands, the total handling either or both brands is something less than 15,400 stations. For the services performed in placing Firestone and Goodyear products with Shell outlets, Shell Oil is paid a sales commission by Firestone or Goodyear as the case may be. In this same group of answers Shell noted that it is negotiating with Goodyear for the sale of 1,000 tons of synthetic rubber in May 1955 and has secured orders from Firestone for about 3,600 tons for delivery in May, June, and July 1955. Moreover, Shell noted that it has a preliminary agreement with United States Rubber covering about 10,000 tons to be sold to United States Rubber by Shell during the balance of 1955 and is presently negotiating for the sale of synthetic rubber to Goodrich. Consequently, Shell has or is attempting to negotiate a distribution tie-in with the Big Four com-

panies. In view of Shell's connections with one or more of the Big Four rubber companies, consideration should be given to the influence which the Big Four or any one of them may exert upon Shell's operation of the integrated rubber-producing facilities on the west coast.

In this respect it should be kept in mind that Shell Oil Co., the parent corporation of Shell Chemical Corp., is currently a defendant in the case of *United States* v. *Standard Oil Company of California et al.* (Civil No. 11584–C), filed on May 12, 1950, in the Southern District of California, according to information furnished by the Department of Justice. It is common knowledge that the Big Four companies have similarly been involved in antitrust litigation instituted by the United States Government in recent years.

In view of these facts, the Congress should consider carefully whether awarding the integrated rubber producing facilities on the west coast to Shell will in reality encourage a free, competitive synthetic rubber industry.

Small business

Shell's only commitment in its contract to purchase the three plants to offer its production of synthetic rubber to small business is as follows. It states that contract coverage of purchase for synthetic rubber will be offered to small business enterprises in the trading area on the same basis as that offered to large consumers. It notes its intention to offer its entire production of synthetic rubber to consumers in the marketing area west of the Rocky Mountains on both contract and spot sale basis. It states that it is its normal practice to reserve a portion of production to cover spot sales to consumers who cannot see their way clear to make forward commitments. In addition, Shell stated that it will offer to small business enterprises on the same terms as offered to large consumers any quantity of butadiene remaining available after the needs of the copolymer plant for butadiene have been met. Shell also notes that it intends to grant to operators of copolymer plants first refusal of styrene produced at the Shell styrene plant and not consumed at the Shell copolymer plant. Production not so sold or consumed will be sold on terms offered equally to large consumers and small business enterprises alike. It is submitted that these provisions are of little benefit to small business enterprise. They are couched in such general terms that it is difficult to conceive of a manner in which they could be enforced for the benefit of small business. In its replies to Senator Morse's questions, Shell noted that its attorneys were of the opinion that the United States Government is the real party in interest in any suit for alleged breach of the agreement between Shell and the Disposal Commission and that, consequently, any action to enforce even these weak provisions in favor of small business would have to be initiated by the United States Government. In the opinion of Shell's attorneys, the remedy for breach of the small business provisions in the contract between Shell and the Disposal Commission would be by injunction rather than for damages. If this is the manner in which it is sought to enforce the provisions of the contract between Shell and the Disposal Commission, it seems unlikely that small business would achieve through court action any assured portion of the products from the three plants tentatively awarded to Shell. It has been previously noted that Shell is already negotiating for the sale of the products of the copolymer plant with the Big Four.

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Price on reoffering

It is interesting to note that the record of the hearings before the Subcommittee on Production and Stabilization contains a letter dated March 10, 1955, from Mr. Edwin W. Pauley, one of the unsuccessful bidders on the butadiene plant individually and on the copolymer plant in conjunction with Minnesota Mining & Manufacturing Co. and Midland Rubber Corp., addressed to Senator Frear as chairman of the subcommittee. This letter appears on page 11A of the appendix of the hearings. It states in part:

> I am confident that I, my associates and others, will bid for the three plants a sum exceeding the Shell Chemical Corp.'s illegal lump-sum package proposal.

It is not an unreasonable assumption to believe that other potential purchasers exist for 1 or more of the 3 plants who would be willing to pay for them in the aggregate a sum at least equaling the $30 million presently offered by Shell.

CONCLUSION

It should be kept in mind constantly that the Congress has retained for itself full discretion in determining whether to disapprove all or any portion of the plan for disposal recommended by the Commission. It is not necessary that there be found any evidence of unlawful action on the part of any of the prospective purchasers as a prerequisite for action by either House of the Congress toward disallowing the purchase. This report has attempted to set forth reasons why the proposed sale to Shell of three rubber-producing facilities in California should be set aside. Reasons for so doing based on purely policy considerations would amply justify this result. In addition, however, Shell has failed to comply with the clear requirements of the Disposal Act setting forth the rules for submitting to the Disposal Commission proposals to purchase any one or more of the Government-owned rubber-producing facilities. The legality of the procedure followed by Shell has been seriously questioned. Wholly apart from a determination of that question, however, the Congress should give no benefit to a prospective purchaser who has declined to follow the rules of procedure faithfully observed by every other successful purchaser of one or more of the Government-owned synthetic rubber plants. Shell alone refused to abide by the rules. It followed this course deliberately, not through oversight. The Commission and the Congress have a moral obligation to require that all purchasers of these plants follow the same rules of procedure in acquiring them. Failure to do so would break down the incentive to abide by the statutory criteria for disposal laid down by the Congress. For these reasons the Senate should disapprove the proposed sale of these three plants to Shell Chemical Corp. and the Congress should proceed to adopt appropriate legislation enabling a second offering of these plants to be made for sale to private enterprise. The first step in this procedure should be the adoption of one of these resolutions. Your committee urges that this be done immediately.

J. W. Fulbright.
John Sparkman.
Herbert H. Lehman.
Wayne Morse.

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